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PUBLIC HEARING
COMMISSION ON STATE MANDATES

--o0o--

TIME: 9:30 a.m.
DATE: October 26, 2000
PLACE: State Capitol, Room 126
Sacramento, California

--o0o--

REPORTER'S TRANSCRIPT OF PROCEEDINGS

--o0o--

Reported By: YVONNE K. FENNER, CSR License #10909, RPR

1 A P P E A R A N C E S

2

3 COMMISSION MEMBERS

4 ANNETTE PORINI, Chairperson
5 Representative of B. Timothy Gage, Director
6 State Department of Finance

7 ALBERT P. "AL" BELTRAMI
8 Public Member

9 HEATHER A. HALSEY
10 Representative for Steven Nissen, Director
11 Office of Planning and Research

12 JOHN S. LAZAR
13 City Council Member
14 Turlock City Council

15 BRUCE ROBECK
16 Representative of Kathleen Connell
17 State Controller

18 WILLIAM SHERWOOD, Vice Chairperson
19 Representative of Philip Angelides
20 State Treasurer

21 JOANN E. STEINMEIER
22 School Board Member
23 Arcadia Unified School District

24

25 COMMISSION STAFF

26 PAULA HIGASHI, Executive Director

27 PAT HART JORGENSEN, Chief Legal Counsel

28 SEAN P. AVALOS, Staff Counsel

29 CAMILLE SHELTON, Staff Counsel

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2 PUBLIC PRESENTATIONS:

3 JAMES APPS
4 Department of Finance

5 ROBERT BALLENGER, Senior Manager
6 Animal Care and Control Department
7 County of Los Angeles

8 TERI BARNATO
9 Association of Vets for Animal Rights

10 ALLAN P. BURDICK, Vice President
11 DMG Maximus on behalf of
12 County of Tulare and City of Lindsay

13 PAT CLAERBOUT, Operations Manager
14 Southeast Area Animal Control Authority

15 HOWARD J. DAVIES
16 Mariposa County Sheriff

17 DR. DENNIS DAVIS, D.V.M.
18 Animal Care and Control Department
19 Lancaster Shelter
20 County of Los Angeles

21 LT. RAMON FIGUEROA
22 Department of Public Safety
23 City of Lindsay

24 GREG FOSS
25 County of Mendocino

26 MEG HALLORAN, Deputy Attorney General
27 on behalf of the Department of Finance

28 VIRGINIA HANDLEY
The Fund for Animals

JOHN HUMPHREY
San Diego Animal Control

LEONARD KAYE, on behalf of County of Los Angeles

DOLORES M. KEYES
Coastal Animal Services Authority

DENA MANGIAMELE, D.V.M.
San Diego Animal Control

KATE M. NEISWENDER, Consultant
Senate Committee on Natural Resources and Wildlife

1 LOIS NEWMAN
Cat and Dog Rescue Association
2
3 KEITH PETERSEN, MPA, JD, President
SixTen and Associates
4
5 LYNN PODESTO
Department of Finance
6
7 MIKE ROSS
Contra Costa County
8
9 DANIEL G. STONE, Deputy Attorney General
on behalf of the Department of Finance
10
11 PAMELA STONE, Senior Manager/Legal Counsel
DMG Maximus on behalf of
City of Lindsay and County of Tulare
12
13 RICHARD WARD
State Humane Association of California
14
15 PATRICIA WILCOX
California Animal Control Directors Association
16
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1 ERRATA SHEET

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3 Page Line Correction

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1 BE IT REMEMBERED that on Thursday, the 26th
2 day of October, 2000, commencing at the hour of
3 9:38 a.m., thereof, at the State Capitol, Room 126,
4 Sacramento, California, before me, Yvonne K. Fenner,
5 a Certified Shorthand Reporter in the State of
6 California, the following proceedings were had:
7 --o0o--
8 CHAIRPERSON PORINI: All right, we'll go ahead
9 and call the meeting of the Commission on State Mandates
10 to order. May I have roll call.
11 MS. HIGASHI: Mr. Beltrami.
12 MR. BELTRAMI: Here.
13 MS. HIGASHI: Ms. Halsey.
14 MS. HALSEY: Here.
15 MS. HIGASHI: Mr. Lazar.
16 MR. LAZAR: Here.
17 MS. HIGASHI: Mr. Robeck.
18 MR. ROBECK: Here.
19 MS. HIGASHI: Mr. Sherwood.
20 MR. SHERWOOD: Here.
21 MS. HIGASHI: Ms. Steinmeier.
22 MS. STEINMEIER: Here.
23 MS. HIGASHI: Ms. Porini.
24 CHAIRPERSON PORINI: Here.
25 MS. HIGASHI: Thank you.
26 CHAIRPERSON PORINI: Okay. Our first item will
27 be our minutes. I understand there is a correction to
28 be made to our minutes.

1 MR. ROBECK: Yes, Madame Chair. The minutes on
2 page 3 indicate or suggest that I had indicated a
3 particular methodology to determine which substances
4 were toxic. It says he suggested using EPA's list. And
5 I think, as I've reviewed the transcripts, that's not
6 accurate. I did not suggest a particular methodology.
7 So if that could be corrected, I'd appreciate it.

8 CHAIRPERSON PORINI: All right.

9 MS. HIGASHI: We will correct that.

10 CHAIRPERSON PORINI: Thank you, Mr. Robeck.

11 And, Ms. Halsey, did you have -- you would like
12 to --

13 MS. HALSEY: It's on Item 2 in the minutes.

14 CHAIRPERSON PORINI: That's page 3?

15 MS. HALSEY: Page 3. And I just checked on the
16 transcripts, and it says also that I voted aye, but I
17 distinctly recall voting no on that.

18 CHAIRPERSON PORINI: All right. Maybe we can
19 have staff double-check on this item.

20 MS. HIGASHI: We will.

21 CHAIRPERSON PORINI: All right. With those two
22 amendments, do I have a motion to adopt the minutes?

23 Mr. Beltrami, I'm sorry you can't be listed.
24 You weren't here.

25 MS. STEINMEIER: Move the adoption of the
26 minutes.

27 MR. SHERWOOD: Second.

28 CHAIRPERSON PORINI: All right. We have a

1 motion and a second. All those in favor indicate with
2 "aye."

3 MULTIPLE SPEAKERS: Aye.

4 CHAIRPERSON PORINI: Opposed?

5 MR. BELTRAMI: Abstain, Madame Chair.

6 CHAIRPERSON PORINI: Thank you, Mr. Beltrami.

7 That takes us to our first item of business.

8 MS. HIGASHI: Item 2 is the hearing on the
9 animal adoption test claim. Staff counsel, Camille
10 Shelton, will present this item.

11 CHAIRPERSON PORINI: Before we start, Mr. Apps,
12 do you -- did you want to make a statement?

13 MR. APPS: Thank you, Madame Chair, yes, a
14 statement and a request. The person that we were
15 planning to bring forward as an expert witness in this
16 area, who has provided you with some written material
17 before, Ms. Bryant, was in an auto accident last evening
18 in Los Angeles, wasn't able to make it to this meeting
19 today, and because of the critical nature of her
20 information and testimony for you, we would ask that
21 this matter be continued to the November hearing.

22 I understand there are a number of people here
23 who are -- wanted to proceed, but we feel it's very
24 important that Ms. Bryant be allowed to personally be
25 here to both provide you with information, to respond to
26 any questions that you may have, and other information
27 that may be presented to you. So we would request that
28 this be continued to November.

1 CHAIRPERSON PORINI: All right. It's
2 unfortunate. Mr. Kaye?

3 MR. KAYE: Yeah, we obviously are very sorry to
4 hear of Professor Bryant's accident and, you know, we'll
5 do whatever we can to, you know, wish her well and that
6 she return. However, it's our feeling that we -- we --
7 we've assembled at great expense a number of folks from
8 around the state to talk this morning about animal care
9 and control, we would appreciate perhaps going forward.
10 Thank you.

11 CHAIRPERSON PORINI: All right, Members, it's an
12 unfortunate circumstance. I would like to personally be
13 able to grant the continuance. I do recognize that it
14 creates a problem for you, Mr. Kaye. I'd like to hear
15 from other members how they feel about that.

16 MS. STEINMEIER: I have a question.

17 CHAIRPERSON PORINI: Yes.

18 MS. STEINMEIER: Do we anticipate -- I don't
19 know the nature of the injuries of this individual, so
20 is there any anticipation that in some short time that
21 this person will be able to be here, Mr. Apps?

22 MR. APPS: I did speak with her on the phone
23 just within the last half hour and she indicated that
24 although her vehicle was basically totaled that she has
25 not sustained serious injury and will be able to be here
26 in November, barring any -- she will be here in
27 November.

28 MR. BELTRAMI: Madame Chair, can we try to cut

1 the baby in half and hear the folks that are here and
2 continue the item until we can hear the other person?

3 CHAIRPERSON PORINI: I don't know how the
4 claimants feel. It seems to me that that could create
5 an advantage for one side or the other to not be able to
6 hear what's going on at the same time.

7 MR. KAYE: Madame Chairperson?

8 CHAIRPERSON PORINI: Mr. Kaye.

9 MR. KAYE: Yeah. We have a tendency to agree
10 with you; however, this is such an important matter, we
11 would defer to the judgment of the Commission. It's our
12 request that we move forward this morning.

13 MS. STEINMEIER: Well, we do have -- we do have
14 plenty of material from this witness, I mean, a
15 substantial amount. And I realize that it puts -- puts
16 one side at a disadvantage not to be here to answer our
17 questions. But having studied it, I -- I don't think
18 that would make a big difference, at least for me. So I
19 would just as soon continue today. That's -- that's
20 what I'd like to do.

21 MS. HALLORAN: Commissioners, my name is Meg
22 Halloran, a deputy attorney general representing
23 Department of Finance in this hearing. I understand
24 that Professor Bryant has prepared additional
25 comments -- excuse me -- that she was going to be
26 delivering this morning -- excuse me -- and I believe
27 there is a person from Senator Hayden's office who
28 would, at a minimum, request that she be permitted to

1 read those comments into the record.

2 I don't -- I understand it's the practice of the
3 Commission to make its decision at the time of the
4 hearing, but I would request in the alternative if you
5 decide not to postpone the hearing, that Professor
6 Bryant be given the opportunity to submit additional
7 comments in response to issues that may be raised at
8 this hearing that were not dealt with in her written
9 comments.

10 Thank you.

11 CHAIRPERSON PORINI: Paula.

12 MS. HIGASHI: I'd like to note that in the past
13 we have had hearings where we have received testimony
14 where the Commission has decided not to vote, but to
15 defer voting until a subsequent hearing where copies of
16 the transcript were immediately made available to all of
17 the parties. This was a very common practice during
18 special education proceedings, and it's something that
19 could easily be employed here.

20 MR. LAZAR: What we would do today is go ahead
21 and have the hearing and then have written testimony or
22 comments provided to us and just actually vote at the
23 next meeting?

24 MS. HIGASHI: That's --

25 MR. LAZAR: The hearing wouldn't be continued,
26 we'd just go ahead and vote?

27 MS. HIGASHI: We would just keep the record open
28 and you could vote at the next meeting.

1 MR. LAZAR: I'd be in favor of that.

2 MR. BELTRAMI: So would I.

3 MS. STEINMEIER: Me too.

4 CHAIRPERSON PORINI: Well, it looks like there

5 are three votes in favor. Are there more? I -- I

6 frankly am not because I feel like it does disadvantage

7 both sides. It disadvantages Finance and it

8 disadvantages the claimants, who may want to rebut

9 comments that come in at the next hearing and, you know,

10 under those circumstances I believe you would probably,

11 Mr. Kaye, want to bring folks back at that point in

12 time, so.

13 MR. SHERWOOD: I have a tendency to agree with

14 that.

15 CHAIRPERSON PORINI: Ms. Halsey.

16 MR. ROBECK: The solution being what? Do you

17 want to just postpone the whole hearing?

18 CHAIRPERSON PORINI: I think that's -- that

19 would be my alternative. I hate to do that because I do

20 recognize that people have come some distance for this,

21 but I think we end up with double -- double the workload

22 and double the time if we don't.

23 MR. ROBECK: Do we have -- have we seen the

24 additional written comments by Professor Bryant?

25 CHAIRPERSON PORINI: I have not.

26 MR. APPS: We do have a copy. In fact, I'm

27 having copies made in the eventuality that they would

28 need to be read by Senator Hayden's representative.

1 MR. KAYE: Madame Chairman, we would have no
2 objection to someone else reading her comments, you
3 know, after ours so that it may be considered by this
4 body.

5 MS. STEINMEIER: Madame Chairman, I'd like to
6 move that we hear this, then keep the record open and
7 make our decision at our November meeting.

8 MR. BELTRAMI: Second.

9 CHAIRPERSON PORINI: All right. May I have roll
10 call.

11 MS. HIGASHI: Mr. Beltrami.

12 MR. BELTRAMI: Yes.

13 MS. HIGASHI: Ms. Halsey.

14 MS. HALSEY: Yes.

15 MS. HIGASHI: Mr. Lazar.

16 MR. LAZAR: Yes.

17 MS. HIGASHI: Mr. Robeck.

18 MR. ROBECK: Yes.

19 MS. HIGASHI: Mr. Sherwood.

20 MR. SHERWOOD: No.

21 MS. HIGASHI: Ms. Steinmeier.

22 MS. STEINMEIER: Aye.

23 MS. HIGASHI: Ms. Porini.

24 CHAIRPERSON PORINI: No.

25 All right. We will proceed with our hearing.

26 MS. HALLORAN: Madame Chairman, may I, for a
27 point of clarification?

28 CHAIRPERSON PORINI: Yes, please.

1 MS. HALLORAN: It's hard to speak into the
2 microphone and look at you.

3 In that we will be proceeding, is the Commission
4 indicating that Professor Bryant will have the
5 opportunity to make comments in person at the next
6 session, if she feels necessary?

7 CHAIRPERSON PORINI: So we will, in fact, open
8 the record and have Professor Bryant here to make public
9 statement.

10 MS. HALLORAN: If necessary.

11 CHAIRPERSON PORINI: That's -- is that --

12 MR. LAZAR: That wasn't my understanding.

13 MS. STEINMEIER: We'd get that in writing, is
14 what we were discussing. So where are we?

15 CHAIRPERSON PORINI: The maker of the motion?

16 MS. STEINMEIER: That was me. Well, my intent,
17 I said keep the record open, I didn't talk about -- I
18 wasn't talking about oral testimony. I was talking
19 about something in writing based on what happens today.

20 CHAIRPERSON PORINI: All right.

21 MR. LAZAR: That was my understanding as well.

22 MS. HALSEY: That's not the same as allowing the
23 parties to present their cases, though, in person. It
24 doesn't seem fair to me.

25 MS. STEINMEIER: Well, the witness is not the
26 entire case. It's part of the case. There's just a ton
27 of stuff in here from lots of individuals, so it's
28 really only one individual that --

1 MS. HALSEY: She's a key.

2 MS. STEINMEIER: She's an important one. I'm
3 not saying she's not.

4 CHAIRPERSON PORINI: All right. That apparently
5 doesn't change anyone's mind, so we will go ahead with
6 our hearing today. We will keep the record open for
7 written comments from Ms. Bryant, and we will allow her
8 written testimony to be read into the record. It's an
9 unfortunate situation.

10 Staff, would you like to proceed.

11 MS. HIGASHI: Ms. Shelton will introduce the
12 item.

13 MS. SHELTON: Good morning. This is the hearing
14 on the test claim filed by the Counties of Los Angeles,
15 Tulare, Fresno, the City of Lindsay, and the Southeast
16 Area Animal Control Authority. The test claim hearing
17 is the first stage of the mandate process and requires
18 the Commission to make a legal determination whether the
19 test claim legislation constitutes a reimbursable
20 state-mandated program for local agencies under Article
21 XIII B, Section 6 of the California State Constitution.

22 If the Commission approves the test claim and
23 determines that all or a portion of the test claim
24 legislation imposes a reimbursable state-mandated
25 program, then the Commission moves on to the second
26 phase of the mandate process, the adoption of the
27 parameters and guidelines. At the parameters and
28 guidelines phase, the Commission will consider the

1 activities and costs that will be reimbursable, such as
2 the costs local agencies have incurred for the
3 construction of new facilities for impounded animals and
4 veterinary care occurring as a result of the increased
5 holding period.

6 If the Commission approves the test claim and
7 adopts the parameters and guidelines, the Commission
8 will adopt an estimate of statewide costs and report
9 that estimate to the legislature for appropriation.

10 In this case, staff concludes that the test
11 claim legislation constitutes a partial reimbursable
12 state-mandated program as outlined in the staff
13 conclusion and recommendation on pages 5 and 6 of the
14 analysis.

15 I will also note that we inadvertently omitted a
16 couple of procedural documents from the administrative
17 record. Those documents consist of the letter from the
18 County of Los Angeles amending the claim to add the
19 County of Tulare as a co-claimant and the attachment to
20 the declaration of the Tulare County counsel regarding
21 the amendment. I have given those documents to the
22 members and the parties, and the record is now complete.

23 I have also received three late filings which I
24 have passed out to you and all of the parties, one late
25 filing from Kate Neiswender from Senator Hayden's
26 office, the second late filing from the mayor of City of
27 Berkeley, and the third late filing from Mr. Bert
28 Garzelli, director of public safety in the City of

1 Lindsay.

2 Will the parties at the table please state their
3 names for the record.

4 MR. KAYE: Leonard Kaye for the County of Los
5 Angeles.

6 DR. DAVIS: Dennis Davis, County of Los Angeles.

7 MS. CLAERBOUT: Pat Claerbout, Southeast Area
8 Animal Control Authority.

9 MR. BALLENGER: Bob Ballenger, County of Los
10 Angeles.

11 MS. STONE: Pamela Stone on behalf of the County
12 of Tulare.

13 LT. FIGUEROA: Ramon Figueroa, City of Lindsay.

14 MR. BURDICK: Allan Burdick on behalf of the
15 County of Tulare and City of Lindsay.

16 MR. APPS: Jim Apps with the Department of
17 Finance.

18 MS. HALLORAN: Meg Halloran from the Attorney
19 General's office on behalf of the Department of Finance.

20 CHAIRPERSON PORINI: Mr. Robeck.

21 MR. ROBECK: We have not had the witnesses
22 sworn.

23 MS. HIGASHI: I was just about to do that. It
24 usually follows the introductions.

25 Will all of the parties and representatives at
26 the table and all of the persons in the audience who
27 have signed up to offer public comment please raise your
28 right hand.

1 Do you solemnly swear or affirm that the
2 testimony which you're about to give is true and correct
3 based upon your personal knowledge, information, or
4 belief?

5 (Response from multiple speakers.)

6 MS. HIGASHI: Thank you.

7 CHAIRPERSON PORINI: All right. Mr. Kaye, would
8 you like to begin?

9 MR. KAYE: Yes, thank you.

10 As you've stated, I'm Leonard Kaye for the test
11 claimants, County of Los Angeles. And I'll try and keep
12 my remarks brief here this morning as I understand there
13 are many witnesses and our fellow co-claimants, persons
14 from around the state who wish an opportunity to address
15 you that are here this morning.

16 This morning we'll try and focus on
17 reimbursement for the animal treatment. Animal
18 treatment. We believe it's newly mandated in SB 1785.
19 We won't be talking much about the long list of other
20 new services that your staff found to be reimbursable
21 simply because here we agree with staff's analysis and
22 staff's conclusion.

23 Regarding animal treatment, we believe that
24 SB 1785 imposed a new state standard, a care and
25 treatment standard. The old standard prior to SB 1785
26 imposed a care and comfort standard. Under the old
27 standard, we were required to, one, treat our animals
28 kindly; two, use slight care for animal preservation;

1 and, three, provide injured dogs and cats with proper
2 care and emergency treatment primarily to relieve pain
3 and suffering.

4 This type of standard, this old standard, we
5 refer to as the care and comfort standard. It's been
6 around a long time, since 1905 when emergency treatment
7 was added to law in PC 597(F)(b) and when kind treatment
8 and slight care was added to law in Civil Code Sections
9 1834 and 1846, respectively, way back in 1872.

10 SB 1785 changed all that and imposed a care and
11 treatment standard as noted by staff on page 32 of the
12 their final analysis. Under SB 1785, Penal Code Section
13 597.1(A) now requires that we provide care and
14 treatment. Under prior law, PC 597(F)(a) only required
15 that we care for the animal and, in PC 597(F)(b),
16 provide emergency treatment to injured dogs and cats.

17 Prior law then does not require us to provide
18 dogs and cats, whether they be injured or not, more than
19 emergency treatment. It does not require that we treat
20 other animals at all. It only requires a care and
21 comfort standard.

22 An example of this old standard is found in the
23 parameters and guidelines for reimbursable care and
24 comfort services mandated under Chapter 1060, Statutes
25 of 1980, requiring that we hold cats for 72 hours.
26 Costs incurred to feed the cats, change their litter,
27 and clean and maintain their cages were found to be
28 reimbursable. These care and comfort duties, of course,

1 did not include treatment. It wasn't our standard then,
2 but it is now.

3 And as might be expected, this modern care and
4 treatment standard costs us more to implement than the
5 old care and comfort standard where we merely had to
6 treat our animals kindly, provide slight care and, if
7 injured, in the case of dogs and cats, provide emergency
8 treatment to alleviate pain and suffering to make the
9 animal comfortable in their final hours.

10 We believe that we cannot and should not revert
11 back to the old standard. We should not turn back the
12 hands of time for those animals. As required in
13 SB 1785, we must now provide care and treatment, so we
14 ask that this treatment requirement be memorialized by
15 your action today, that treatment be inserted in staff's
16 language in their last bullet on page 35 to read:
17 "Providing prompt and necessary veterinary care and
18 treatment for abandoned animals other than cats and
19 dogs," and by adding a new bullet to read: "Providing
20 nonemergency treatment for cats and dogs."

21 Thank you.

22 MR. BALLENGER: Good morning. I'm Bob Ballenger
23 of the Los Angeles County Department of Animal Care and
24 Control. Our department impounds about 100,000 animals
25 a year and serves a population of about 3.5 million
26 residents. In addition to all the unincorporated areas
27 in Los Angeles County, we also provided contract service
28 to 52 cities in Los Angeles and Ventura Counties.

1 In my opinion Senate Bill 1785 was the most
2 far-reaching measure affecting animal control and care
3 agencies in California since the state legislature
4 ordered cities and counties to provide animal regulation
5 services in the mid 1930s. The Commission staff did a
6 good job in sorting out the numerous divisions of
7 SB 1785 and itemizing the many reimbursable
8 state-mandated claims.

9 We concur with the staff that the duties they
10 cited on page 6 of the final analysis are reimbursable.
11 These duties include providing care and maintenance for
12 animals during the increased holding period, developing
13 a standardized protocol for assessing feral cats,
14 posting lost and found lists, maintaining impound
15 records, and providing veterinarian medical care for
16 animals other than dogs and cats.

17 One duty not on the staff's list of reimbursable
18 duties is the duty to provide treatment for impounded
19 dogs and cats. We respectfully disagree with the
20 staff's assertion that this duty was preexisting and not
21 new. We believe the duty to provide treatment to save
22 an animal's life, at least for its extended holding
23 period, is new and therefore reimbursable.

24 And to talk more about this, we would like to
25 introduce Dr. Dennis Davis, staff veterinarian at our
26 Lancaster animal shelter.

27 CHAIRPERSON PORINI: Dr. Davis.

28 DR. DAVIS: Good morning. I'm the veterinarian

1 for Los Angeles County, and I'm at the animal shelter in
2 Lancaster.

3 As Bob has indicated, under Senator Hayden's
4 bill, we are now providing treatment for animals. We
5 now have a treatment protocol. It's different from the
6 care and comfort protocol we used under the prior law.
7 Under the prior law, we had to evaluate dogs and cats,
8 relieve their pain and suffering, and provide a
9 comfortable environment for 72 hours.

10 Now we have to hold dogs and cats longer, and we
11 must provide ongoing treatment during this longer
12 holding period. This ongoing treatment can be
13 life-saving or life-extending, at least during the new
14 required holding periods. Therefore the prior 72-hour
15 care and comfort standard has been replaced with a
16 continuing treatment standard, designed to stabilize the
17 animal over a longer period of time.

18 Regarding communicable diseases like tracheal
19 bronchitis, kennel cough, and upper respiratory
20 infections, under prior law they were not routinely
21 treated. Now they are. Our treatment protocol requires
22 this routine treatment, not only to treat the infected
23 animals, but also to protect other animals in the
24 shelter, especially during this extended holding period
25 or even later when they're adopted, be treated then.

26 I'd like to point out that when I talk about the
27 prior 72-hour care and comfort standard, I'm talking
28 about things like observing the animal, making it

1 comfortable, cleaning the animal and its cage, and
2 providing the animal with food and water. When I talk
3 about routine animal treatment, I'm talking about
4 administering antibiotics and medications, doing
5 medicated baths, applying splints and bandages,
6 cleaning, flushing, suturing wounds, and giving
7 injections.

8 In some cases required animal treatment under
9 the Hayden bill is not routine, but it must be provided
10 in order to keep the animal alive during this new
11 holding period. For example, I recently had to perform
12 surgery on an animal with a severe infection. Without
13 such treatment, the animal would have died.

14 So our treatment protocol under the Hayden bill
15 requires that we do much more than just keep the animal
16 clean and comfortable. We must now treat them too.

17 Thank you.

18 CHAIRPERSON PORINI: Next witness.

19 MS. CLAERBOUT: Good morning. My name is Pat
20 Claerbout. I'm representing the Southeast Area Animal
21 Control Authority, a co-claimant with Los Angeles
22 County. The Southeast Area Animal Control Authority
23 provides animal control services to 12 contract cities
24 within Los Angeles County. We service an area with a
25 combined population of 720,000 people and care for over
26 20,000 animals annually.

27 I have had extensive experience in animal
28 control, having been the director of two county animal

1 agencies during the last ten years. I have served on
2 the Board of California Animal Control Directors
3 Association and held the position of legislative chair
4 for the last ten years -- I'm sorry, for the last four
5 years. Seems like ten.

6 The California Animal Control Directors
7 Association represents 200 governmental animal control
8 agencies and humane societies within California. During
9 the legislative hearings on Senate Bill 1785, I
10 testified repeatedly on the many provisions of this
11 bill. While many professionals in our field were in
12 agreement with the goals of 1785, we realistically knew
13 that these new mandated provisions would drastically
14 increase the cost of providing animal control care in
15 shelters throughout the state. This dramatic cost
16 increase was the basis of opposition to 1785.

17 As Mr. Ballenger has stated, Commission staff
18 has done an excellent job of itemizing the many
19 reimbursable duties of 1785. I would just like to
20 comment on the one area where we do disagree with staff
21 finding, the duty to provide medical treatment for dogs
22 and cats.

23 Under prior law, shelters were only required to
24 provide care and emergency treatment to relieve pain and
25 suffering. Clearly we are now required to provide more
26 than basic emergency treatment. In fact, the authors of
27 1758 felt so strongly about increasing the level of
28 treatment provided to these animals that they repeated

1 in three sections of 1785 the statement that it is the
2 policy of the State that no treatable animal should be
3 euthanized and even go on to define treatable animals as
4 any animal that could become adoptable with reasonable
5 effort.

6 These statements of policy, coupled with the new
7 mandated provisions under Penal Code 597.1 to provide
8 care and treatment, clearly have created a higher level
9 of service. This higher level of service is an ongoing
10 medical treatment for every animal while it is impounded
11 in a shelter. Based on my personal experience and
12 continual contact with agencies, small and large,
13 without (sic) the state, the new mandated provisions of
14 1785 have increased the level of treatment given to
15 shelter animals and at a substantial increase in cost to
16 animal control agencies.

17 You will later hear from several other animal
18 control directors who will give you specific situations
19 documenting these increased costs in care.

20 Thank you.

21 CHAIRPERSON PORINI: Ms. Stone.

22 MS. STONE: Thank you very much. Good morning,
23 Madame Chairman, Members of the Commission. My name is
24 Pamela Stone, and I'm here on behalf of the County of
25 Tulare and City of Lindsay, who are co-claimants in this
26 matter.

27 First of all, we would like to thank the
28 Commission staff for its hard work in analysis and

1 preparation of the draft staff analysis to which we
2 concur as far as it goes. We also agree with the City
3 of -- the County of Los Angeles and other co-claimants
4 that the issue of treatment costs of animals is a
5 reimbursable component in this particular claim.

6 We would like to address another issue, and that
7 is the issue of owner-relinquished animals. Your staff
8 has come to the conclusion that such relinquishment does
9 not impose a state-mandated activity upon public pounds
10 and shelters, and we respectfully disagree.

11 As noted in your materials, animals are defined
12 as personal property within the law of the state of
13 California, and abandoned property has been defined as
14 any property in which the owner has intentionally
15 relinquished all of his rights. Thus an animal which
16 is -- the owner has relinquished, by definition within
17 the state of California, is abandoned property and
18 therefore should be covered within the ambit (sic) of
19 reimbursable activities in this test claim.

20 The consequence of not accepting an
21 owner-relinquished animal or placing the fee on
22 accepting an owner-relinquished animal which is very
23 high discourages the owner relinquishing these animals
24 and results in these animals being left unclaimed in
25 front of pounds and shelters or just abandoned in the
26 streets. And thus they come into the shelter as an
27 abandoned animal.

28 Lt. Figueroa from the Lindsay Department of

1 Public Safety, which has police, fire, and animal
2 control divisions, will address this issue and also the
3 difference in having a public shelter in a rural
4 environment.

5 CHAIRPERSON PORINI: Lt. Figueroa.

6 LT. FIGUEROA: Good morning. I'm Lt. Ramon R.
7 Figueroa with the City of Lindsay.

8 Lindsay Animal Control, as of July 1st, 2000,
9 implemented the mandates set by SB 1785. And the four
10 areas that we've been impacted in the first quarter,
11 which consists of January (sic), August, and September,
12 and the increasing holding period, the cost has
13 increased \$11,435.52, which Finance has projected an
14 annual increase of \$45,742.08. The cat assessment
15 program has accrued a cost of \$7,202.76, and the
16 increase in veterinary costs for the year is \$28,326.79.

17 The four areas that we've been impacted has --
18 prior to 1785, we were providing services to the County
19 of Tulare, which was 4900 square miles and contracted
20 services to six other cities. As of July 1st, we no
21 longer provide services to the county and to the cities.
22 We only provide services to the City of Lindsay and the
23 City of Porterville and due to the fact that we weren't
24 going to be able to keep -- make the mandates without
25 overpopulating the facility and jeopardizing the animals
26 with animal diseases.

27 And we have to -- we've had to cut back on the
28 services, and that has led to owners or persons

1 abandoning dogs or animals in front of the facility.
2 We've even encountered where when the persons abandoning
3 the animals are advised that the shelter has cut back on
4 their hours, their comment has been, "Well, this the
5 shelter, I'm just leaving the dog," and they've actually
6 left the animal or the cat or the dog, and we actually
7 have had to follow up and try to get the DA to file
8 criminal charges for abandonment of the animals.

9 Lindsay believes that these four areas are
10 reimbursable for the following reasons: The expanded
11 holding periods imposes a higher level of service; the
12 mandated cat assessment is a costly new program; the
13 higher level of service imposed regarding veterinary
14 service; the no treatable animal shall be euthanized
15 clause of 1785 removes the animal control practitioner's
16 ability to exercise discretionary judgment; fourthly,
17 SB 1785 applies to private shelters only if they accept
18 to -- choose to accept an animal. Public shelters do
19 not have that option.

20 Thank you.

21 CHAIRPERSON PORINI: Mr. Burdick.

22 MR. BURDICK: Chairman Porini and Members of the
23 Board, thank you very much for the opportunity to be
24 here today.

25 I just wanted to remind the Commission members
26 because I don't think any of you were here back in 1981
27 and '82 when then the Board of Control found a
28 reimbursable state mandate for another similar animal

1 control mandate, and that was when they gave cats three
2 days of holding, and it was then called the stray cats
3 bill of rights. And essentially the Commission found
4 that by requiring local agencies to retain stray cats
5 for three days was a reimbursable state mandate.

6 Prior to that time, most animal control
7 shelters, when they found stray cats that they were
8 fairly sure were not going to be able to be adopted
9 would euthanize those animals before -- before they
10 were -- actually were not even taken to the shelter.
11 They were usually euthanized and destroyed after they
12 were picked up.

13 So I wanted just to point out to Members this is
14 not the first time we've dealt with this issue, and
15 consistent with the Board that preceded you, they did
16 find that that particular mandate was a reimbursable
17 state mandate. That happened to be Chapter 1060,
18 Statutes of 1980. And it was heard by the Commission in
19 1981.

20 CHAIRPERSON PORINI: All right. Any questions
21 for these witnesses?

22 All right. We'll move to Ms. Halloran.

23 MS. HALLORAN: Yes. First of all I want to
24 apologize to the Commissioners behind me.

25 CHAIRPERSON PORINI: It's not a problem.

26 MS. HALLORAN: It's an awkward situation.

27 Secondly, I want to point out that some of the
28 issues that have been raised by the witnesses so far are

1 some of the very issues that Professor Bryant was going
2 to be dealing with. Her written comments touch on those
3 issues in part, but not very likely to the extent that
4 she would touch on them if she were here. In that
5 regard in light of the Commission's previous decision on
6 the motion to continue, I would like to request that the
7 Department be given a transcript of these comments as
8 soon as possible so that Ms. Bryant would have the
9 information she needs to make whatever rebuttal.

10 CHAIRPERSON PORINI: How quickly can we have
11 that?

12 MS. HIGASHI: We can ask our court reporter.

13 MS. HALLORAN: It doesn't have to be tomorrow,
14 but.

15 THE REPORTER: Would Monday be all right?

16 MS. HALLORAN: Sure. Fine.

17 CHAIRPERSON PORINI: That's great.

18 MS. HALLORAN: Thank you.

19 Secondly, as a preliminary matter, I would like
20 to point out that Senator Hayden's aide, Ms. Kate
21 Neiswender, is going to be reading the comments of
22 Professor Bryant into the record. And I would -- after
23 my own comments, I would like to yield some of my time
24 to her for that purpose since Professor Bryant would
25 have been our witness.

26 CHAIRPERSON PORINI: All right.

27 MS. HALLORAN: Thank you.

28 What I'm going to do in my comments,

1 Commissioners, is limit them to the legal questions that
2 are raised in this test claim. I would also go on to
3 point out that the law requires that this mandate not be
4 reimbursed, and I will also point out the abundant
5 evidence in this record that supports that conclusion by
6 the Department of Finance.

7 First of all, the law is clear that
8 reimbursement is not only not required, but is
9 prohibited for a state mandate when that mandate is not
10 limited to local government agencies, and there is
11 substantial evidence in this record that the mandates
12 set out in the test claim legislation are not limited to
13 local agencies and that the legislation applies with one
14 exception having to do with the lost and found lists to
15 all shelters in the state, public or private. The
16 Department submits that under these circumstances
17 reimbursement is constitutionally prohibited.

18 The best place to start in a legal analysis of
19 this issue is with the California Constitution itself.
20 And I know you're all familiar with this, but for the
21 record I'd like to point out that the Constitution
22 provides that whenever the legislature mandates a new
23 program or higher level of service on any local
24 government, the State shall provide a subvention of
25 funds to reimburse such local government for the costs
26 of such program or increased level of service.

27 Now, on its face that language would appear to
28 support the claimants; however, the California Supreme

1 Court has interpreted this provision in the case of the
2 County of Los Angeles versus the State of California,
3 and that case provides very clear guidance as to the
4 meaning of that passage. The court said that what the
5 proponents of Article XIII B, Section 6, meant was to
6 require reimbursement to local agencies for the costs
7 involved in carrying out functions peculiar to
8 government, not for expenses incurred by local agencies
9 as an incidental impact of laws that apply generally to
10 all residents and entities.

11 In the County of L.A. case, the claim was for
12 reimbursement for the increased costs to local
13 government of enhanced workers' comp benefits for
14 employees. The California Supreme Court found in that
15 case that the test claim legislation increased the
16 amounts which all employers, including local
17 governments, must pay to employees in workers' comp
18 benefits, and reimbursement was therefore prohibited.

19 The similarities between the County of L.A. case
20 and this case are very important. Under this test claim
21 legislation, all quote depositories -- depositories,
22 excuse me, of animals whether they are public agencies
23 or private are required to comply with the mandates of
24 Chapter 752. Again, there is abundant evidence in this
25 record that many animals -- animal shelters in the
26 state -- I believe the estimates range from a third to
27 one half of the shelters are private. That being the
28 case, there is no way that the function of caring for

1 abandoned animals in this state is a function peculiar
2 to local government.

3 In the County of L.A. case, the California
4 Supreme Court found that the function of providing
5 increased workers' comp benefits to employees, as the
6 test claim legislation in that case did, was clearly not
7 limited to government employers. The court said that
8 the mandate in question applied to all employees and
9 employers and was therefore a general law.

10 The court essentially said that if the law is
11 not peculiar to local government, it is a law of general
12 application. The court ruled that Section 6 does not
13 require reimbursement for the incidental costs of
14 government -- to government of general laws.

15 The Commission staff appears to argue in its
16 final analysis of the claim that since private shelters
17 are not required to accept an animal, Chapter 752 -- the
18 Chapter 752 mandates apply only to local government. In
19 this case, that principle would be applied as follows:
20 With only minor exceptions, this test claim legislation
21 is applicable to all abandoned animals in this state
22 whether sheltered publicly or privately.

23 Nowhere in the legislation is there language
24 that says -- and I'm paraphrasing -- we desire to
25 enhance the adoptability of abandoned animals in public
26 shelters. It doesn't limit the animals to be benefited
27 by this legislation to those that are in public
28 shelters. All animals in the state are the

1 beneficiaries of this legislation, whether they are
2 sheltered publicly or privately. The legislative intent
3 of Chapter 752 makes that point abundantly clear. It
4 was intended to benefit all abandoned animals, not just
5 those housed in municipal shelters.

6 I'd like to direct the Commission's attention to
7 some parts of the legislation itself where that
8 legislative intent is explicit. In Section 1 of
9 Chapter 752, in Subsection (a)(1), it reads: Public and
10 private shelters and humane organizations share a common
11 purpose in saving animals' lives, preventing animal
12 suffering, and eliminating animal abandonment.

13 Also section (d) of that section states: The
14 legislature finds and declares that statutory law
15 prescribes the type of treatment that private citizens
16 must extend to stray animals that voluntarily pick up --
17 excuse me, to stray animals they voluntarily pick up and
18 that public and private animal shelters should be held
19 to the same legal duties as those that exist for private
20 citizens.

21 In subsection (f) the legislature finds and
22 declares that shelters should be required by law to take
23 in lost animals and properly care for them.

24 Section 1846(c) was also amended by the test
25 claim legislation. That section makes it very clear
26 that if the gratuitous depository of a living animal is
27 a public pound, shelter operated by a Society for the
28 Prevention of Cruelty to Animals or humane shelter, the

1 depository shall comply with all other requirements of
2 the Food and Agricultural Code regarding the impounding
3 of live animals.

4 I submit, Commissioners, that that is a very
5 clear expression of legislative intent that the mandates
6 in this legislation apply both to public and private
7 shelters.

8 MS. HIGASHI: Could I just interject for a
9 minute?

10 MS. HALLORAN: Yes.

11 MS. HIGASHI: She's referring to the leg intent
12 language on page 163 of Exhibit A, for those of you who
13 have copies of the test claim.

14 MS. HALLORAN: Thank you. Thank you,
15 Ms. Higashi.

16 Additionally, there are countless references
17 throughout the mandatory provisions of the legislation
18 explicitly stating that the mandate it contains covers
19 both private and public shelters.

20 The Commission staff appears to argue in its
21 analysis that since private shelters are not required to
22 accept an animal that Chapter 752 mandates only apply to
23 local government. Well, first of all, that latter
24 statement is a non sequitur. While an argument can be
25 made that private shelters can decline to accept an
26 animal, it does not follow that once the animal is
27 accepted, the mandates in this legislation do not apply.
28 The Commission's final report itself says that the

1 mandates do apply if the private shelter accepts the
2 animal.

3 I'd like the Commission to consider this
4 analogy: A private hospital is also theoretically, at
5 least, free to decline to provide care to certain
6 individuals. Does that mean that the private hospitals
7 are exempt from all state laws and regulations
8 concerning the standards of care for patients and
9 patients' rights? Absolutely not. Both public and
10 private hospitals must comply with state laws setting
11 standards for patient care and patient rights but those
12 laws that apply not just to public hospitals, but to all
13 hospitals. These laws are called general laws.

14 And as the Supreme Court pointed out in the
15 County of L.A. case, if the law is not peculiar to local
16 government, it is a law of general application and
17 Section 6 does not require subvention for the cost to
18 local government of general laws.

19 And the Department of Finance objects to the
20 Commission staff's assumption that private shelters are
21 free to accept -- to reject any animal. I would call
22 the Commission's attention to Civil Code Section 1816,
23 subsection (a), which is part of the test claim
24 legislation. And that clearly states that private
25 shelters must take in animals if they're able to do so.
26 Once they take in the animal, the mandates clearly do
27 apply as stated above. I don't think that any of the
28 claimants argues that the private shelters are entirely

1 exempt from these new mandates.

2 In order to decide in favor of the claimants,
3 the Commission would have to find that the mandates in
4 question are applicable only to animal shelters run by
5 cities and counties in this state. That finding would
6 be contrary to the weight of the evidence in this
7 record. As pointed out before, there are myriad
8 provisions in this legislation that make it very clear
9 that the mandates, with very limited exceptions, apply
10 both to private and public shelters.

11 Moreover, a finding that the mandates are
12 limited to public shelters could conceivably create
13 something of a policy disaster in that it would
14 essentially exempt private shelters from any of the
15 mandates in this legislation. The legislation, as you
16 know, was intended to curb the mass killing of animals
17 who were not previously given a decent chance of being
18 adopted.

19 In any event, if the Commission does find that
20 the mandates in this legislation impose duties and costs
21 on local governments exclusively, the Department of
22 Finance submits that the cost to local governments are
23 not, quote, state mandated, unquote, as that term is
24 used in Government Code Section 17556. That section
25 prohibits the Commission from finding state-mandated
26 costs if certain circumstances are present.

27 CHAIRPERSON PORINI: All right.

28 MS. HALLORAN: I'm not done, sorry.

1 CHAIRPERSON PORINI: Okay.

2 MS. HALLORAN: Just a few more minutes.

3 I don't have the text in front of me that I can
4 readily find, but essentially those sections provide --
5 17556(d) and 17556(e) provide that if the legislation
6 itself or if other provisions of the law contain
7 authority for the local agencies to impose fees that
8 would offset the costs of the mandate, the mandate is
9 not, quote, state mandated and cannot be reimbursed by
10 the State. Both of these exceptions, the Department
11 submits, are applicable here and bar reimbursement for
12 the local government costs of implementing this
13 legislation.

14 There are many, many provisions in the test
15 claim legislation authorizing local government to levy
16 service charges which would pay for the increased
17 service required by this legislation. Those authority
18 sections are listed in detail in the Department of
19 Finance's comments to the draft staff analysis. You can
20 find the list of all those sections which authorize
21 local fees at page 822 of your materials. That list is
22 part of Exhibit N.

23 In addition, preexisting law provides the
24 authority for fees to cover the type of costs local
25 shelters incur in enforcing these mandates, and I would
26 direct the Commission's attention specifically to Food
27 and Agricultural Code Section 30652. That section
28 provides in part that fees for the issuance of dog

1 license tags and fines collected pursuant to this
2 section can be used first to pay for the issuance of dog
3 license tags and, second, to pay fees, salaries, costs,
4 expenses or any of them for the enforcement of this
5 division and all ordinances which are made pursuant to
6 this division.

7 I would also point out to the Commission that in
8 the case of Connell versus Superior Court, the court in
9 that case found specifically that if the agencies have
10 the authority to levy fees to pay for the program, the
11 costs to those agencies of the program is not state
12 mandated and reimbursement is prohibited.

13 Commissioners, that concludes my comments. I
14 would like to now yield to Senator Hayden's assistant to
15 read Professor Bryan's comments into the record and to
16 comment to behalf of Mr. Hayden.

17 Thank you.

18 CHAIRPERSON PORINI: Kate. Do you want to come
19 around on this side of the table?

20 MS. NEISWENDER: This is not going to be very
21 efficient.

22 CHAIRPERSON PORINI: Unfortunately, this room
23 doesn't accommodate large groups.

24 MS. NEISWENDER: I'm reading this testimony on
25 behalf of Taimie Bryant. This is written in her words
26 for her to say.

27 CHAIRPERSON PORINI: All right. Would you
28 please state your name for the record, first.

1 MS. NEISWENDER: My name is Kate Neiswender.

2 I'm staff to Senator Tom Hayden.

3 As I was saying, this is written for her to say.

4 It was sent to me yesterday, so when I say "I" in this
5 testimony, it means Taimie.

6 As one of drafters of 752, my primary
7 contribution to this hearing lies in an explanation of
8 the structure of Chapter 752 and responses to test
9 claimants' assertions that 752 mandates extensive new
10 duties to keep records and to provide veterinary care.

11 752 applies to all finders and depositories of
12 apparently lost animals. All have a legal duty to make
13 reasonable efforts to find the owner, but private
14 individuals have greater difficulty locating owners
15 because they do not operate shelters. Now that there is
16 the requirement of a place for the public to post
17 lost/found notices, such postings fall with the standard
18 of making reasonable efforts to locate the owner.

19 Without reasonable methods for locating an
20 owner, animals may be left on the street for nonprofit
21 or public shelters to pick up or deliver to public or
22 private shelters as strays or taken into the finder's
23 home without any expectation of an attempt to locate the
24 owner. The ability of the public to post lost/found
25 notices will facilitate owners finding pets and will
26 obviate the need for public or private shelters to
27 impound those animals.

28 Individual finders have not had the explicit

1 obligation to provide prompt and necessary veterinary
2 care except as included in the preexisting requirement
3 that they treat the animal kindly. The requirement of
4 necessary and prompt veterinary care signals to the
5 private finder that this is expected as to the bailments
6 of animals, unlike the bailment of a coat in a
7 coat-check room.

8 Shelters already had this duty and the
9 reciprocal right to collect their reasonable expenses
10 from the owner. Private individuals now have the same
11 burden and under Civil Code Section 1833, the reciprocal
12 right to recover reasonable costs expended to maintain
13 the personal property of another. Having this explicit
14 duty facilitates recovery of those costs.

15 The provision of necessary and prompt veterinary
16 care was also inserted to address the problem of
17 collecting. Public shelters were reluctant to agree to
18 nondiscretionary mandatory release of animals to
19 nonprofit rescue adoption groups. The reluctance was
20 partially for fear of encouraging the practice of
21 collecting. Collecting involves taking in so many
22 animals that individual care is neglected.

23 Our response to that concern was to increase the
24 means by which public shelters, through their law
25 enforcement capacity, could address this problem.
26 First, explicit inclusion of the duty to provide
27 necessary and prompt veterinary care gives rise to an
28 explicit legal claim against the individual for failing

1 to provide such care.

2 Secondly, in Penal Code Section 597.1, we added
3 the provision that an individual convicted of cruelty to
4 animals could be prohibited from owning or having any
5 contact with animals as a condition of probation. With
6 one prosecution, an entire collecting operation can be
7 shut down. Far from adding burdens to public entities,
8 these provisions burden private individuals who never
9 had such explicit duties, and they benefit public
10 entities charged with enforcement of anticruelty
11 statutes.

12 The provisions I have just described address
13 problems associated with private individuals picking up
14 stray animals. I turn now to provisions dealing
15 specifically with shelters.

16 Each provision of Chapter 752 explicitly on its
17 face applies to public and private shelters, with the
18 exception of allowing the public to post lost/found
19 notices. The argument raised by test claimants is one
20 of disproportionate impact from a law of general
21 application. Test claimants contend that public
22 shelters are actually doing all of the sheltering work.
23 That is not what we found when we investigated the
24 situation in California.

25 In California and nationally, private shelters
26 account for so much of the animal sheltering that public
27 shelter impound rates have fallen steadily. Even though
28 shelters are killing at the same rate, they are killing

1 fewer total numbers of animals because of the decrease
2 in impoundments. Not only does the private sector
3 relieve public shelters by taking animals into their own
4 shelters, but it is those shelters that are making
5 inroads in spay/neuter education and services.

6 Test claimants argue that to the extent that
7 private shelters exist at all, public shelters are not
8 obligated to take -- private shelters are not obligated
9 to take in strays. Yet private shelters are required to
10 take charge of animals. Ever since the first burden was
11 placed on animal control departments to take charge of
12 strays, private shelters with humane officers have been
13 required to do the same.

14 Also, private shelters must take charge of
15 animals if under for-profit contract with government, if
16 incorporated to do so as a private for-profit or
17 nonprofit shelter, and if the shelter obligates itself
18 to do so because it has taken in donations on that
19 basis. All of these different types of private shelters
20 are legally obligated to take in strays. Having taken
21 them in, they are obligated to follow the requirements
22 of Chapter 752.

23 Test claimants argue that even if shelters take
24 in stray animals, those shelters can pick and choose the
25 animals they take in. That assertion is true of the --
26 some private shelters' choice among owner-relinquished
27 pets, but public shelters may do the same thing since
28 they are not legally required to take owner-relinquished

1 pets at all.

2 The situation of sheltering stray animals is
3 different. Only someone who has never participated in
4 nonprofit stray animal rescue could believe that such
5 organizations pick and choose by reference to
6 marketability. In fact, private nonprofits are
7 frequently called on by public shelters to assist when
8 there is a sudden influx of animals as, for example,
9 when a collecting operation is shut down.

10 Nonprofit shelters don't pick and choose under
11 those circumstances. They go into overload, and the
12 animals they handle are in bad shape. Ultimately
13 rescued animals are rescued animals whether they are
14 picked up by a public or private entity. Ask any
15 veterinarian who handles rescued animals, and he or she
16 will tell you that to rescue an animal off the street is
17 to rescue an animal in need of, at the very least, basic
18 veterinary care.

19 I note that if it were not the case that private
20 shelters are major players in the sheltering business,
21 there would have been no reason to include them in each
22 code provision of 752. Private shelters were included
23 because of their growing and current prominence in the
24 sheltering business.

25 Senator Hayden brought SB 1785 because of the
26 high and needless cost of killing in our shelters.
27 Shelters were not open hours that the public could
28 reclaim or adopt animals. They were not tracking

1 animals as they were required to do. They were not
2 providing care sufficient to preserve the health or
3 lives of these animals so that they could be reclaimed
4 or adopted. There was no coordination with nonprofit
5 rescue and adoption groups, even to the extent of
6 releasing animals to them.

7 Shelters were not scanning for microchips,
8 despite the offers of the manufacturers to supply and
9 maintain scanners in addition to training employees.
10 This was in disregard of the legal obligations to make
11 reasonable efforts to locate the owners.

12 Test claimants argue that 752 is costly instead
13 of cost saving. Yet they have not sorted out the
14 requirements of 752 from those of the preexisting law.
15 We found in our initial investigations that shelter
16 managers frequently did not know which laws apply to
17 them. We learned that shelter managers were unaware
18 that anticruelty statutes applied to them or what the
19 minimal standards of care are within those statutes.
20 There has been widespread misinterpretation of the cat
21 holding period such that difficult cats have been killed
22 on the theory that they are feral animals who need not
23 be held.

24 People requesting records of shelters have been
25 told that the records kept by public shelters are not
26 available for review by the public. Some shelters did
27 not realize there was any legal duty of care for shelter
28 animals.

1 The most recent example of this lack of
2 knowledge about laws that apply is test claimants'
3 amendment of their claim to include the requirement for
4 records enacted as Business and Professions Code Section
5 4855. In amending their claim there is an implicit
6 acknowledgement that the recordkeeping requirement does
7 apply but that they have only just now been made aware
8 of it.

9 We believe that these gaps in knowledge were
10 partially the result of legal obligations being
11 scattered in different codes. It's easy to conclude
12 that new language in a law represents new requirements,
13 but in many cases 752 is -- the new language is the
14 reiteration of requirements so that the shelter manager
15 can more easily access them. Holding period
16 requirements were already present in the Food and Ag
17 Code. Duties to pick up and provide minimal care were
18 already present in the Penal Code, so those were the
19 codes we focused on for bringing together shelter
20 responsibilities.

21 Test claimants argue that 752 is not just
22 reiteration, but a raising of the bar as to duties on
23 shelters. They argue, for example, that 752 raises the
24 standard of veterinary care. The previous standard of
25 care which is in Penal Code section 597(f) was replaced
26 with a higher standard of care and treatment in section
27 597.1, when a jurisdiction's option to choose between
28 597(f) and 597.1 was eliminated.

1 But 752 removes jurisdictional choice between
2 (f) and .1 has nothing to do with veterinary care. It
3 has everything to do with the extensive language in .1
4 having to do with hearings for people to contest
5 governmental seizure of their personal property, their
6 pets. The option to choose hearings was removed by 752
7 because of our California courts have held that Penal
8 Code Section 597(f) is unconstitutional to the extent
9 that it fails to provide such due process hearings.

10 Even if we focus exclusively on the difference
11 in language between the two sections as to care or care
12 and treatment, the standard of care in 752 is no higher
13 than the single word "care." Test claimants import
14 language from the policy sections of 752 to make the
15 argument that treatable animals must receive care
16 sufficient to make them adoptable. That is not a duty
17 of 752. The only duty language in 752 that is
18 associated with veterinary care are the words "necessary
19 and prompt," which were added to the sections dealing
20 with gratuitous depositories.

21 What is necessary and prompt? It is to
22 euthanize an animal whose pain cannot be alleviated and
23 to do so as soon as possible. It is to stabilize an
24 animal so that the animal can be redeemed by the owner.
25 Necessary and prompt is the lowest standard of care,
26 whether care is described as care or care and treatment.

27 In both 597(f) and 597.1 there is an identical
28 explanatory language as to the veterinary care expected

1 of shelters. The issue of care is obscured when policy
2 language from other sections of Chapter 752 are
3 interjected into the standard of care associated with
4 necessary and prompt veterinary care.

5 Test claimants also argue that necessary and
6 prompt is a new standard because the veterinary content
7 of necessary and prompt has changed over time. It may
8 be true that substantive veterinary standards have
9 changed, but there's always been a reasonableness
10 standard for interpreting care or such terms as
11 "necessary" or "prompt."

12 Along the same lines, test claimants argued that
13 recordkeeping is new because animals have not been
14 entitled to veterinary care. The claim extends even to
15 the argument that euthanasia is not a veterinary medical
16 procedure. In test claimants' most recent submission,
17 they append the American Humane Association's document
18 on reasonable practices, which is an interpretation of
19 752 requirements. In this document, "medically treated"
20 is defined as any procedure performed or medication
21 administered to the animal.

22 The administration of sodium pentobarbital to an
23 animal to medically -- is to medically treat that
24 animal. Euthanasia requires veterinary training,
25 whether it is eight hours specific to euthanasia or a
26 full veterinary education. Moreover, the use of sodium
27 pentobarbital, which is highly controlled, requires
28 detailed recordkeepings as to each single dose

1 administered. If specific animal records do not match
2 up with specific dosages, the users of sodium
3 pentobarbital are in violation of reporting required by
4 federal regulations. Either way, euthanasia is clearly
5 a medical procedure and clearly requires detailed
6 records.

7 There are great efficiencies in treating animals
8 so that they can be redeemed by their owners or adopted by
9 new owners. Redemption and adoption bring in fees or
10 fines, and they save on the costs of killing. To
11 increase redemption and adoption, the working public
12 must have access to the shelter after standard business
13 hours and animals must be held long enough for the
14 public to see them. 752 does both. Actually, the
15 holding periods in 752 provides only four days, which is
16 less than the standard of federal law, other states'
17 law, and California's own vicious dog law.

18 Records are necessary to track animals in the
19 system so that they can be found and reclaimed and they
20 are necessary to protect shelters from the legal
21 presumption that they are harmed -- they harmed an
22 animal if records are not kept. Claimants have argued
23 that the records of 752 provide for more than the
24 records required by the Business and Professions Code.

25 For example, they argue that the name of the
26 adopting party is now required when it wasn't before.
27 Yet disposition of an animal is clearly required. The
28 records are appropriate for the context of shelters,

1 match requirements in existing law, and are minimal in
2 scope. In return for utilizing these practices,
3 shelters will have higher owner redemption and adoption
4 rates.

5 Test claimants have argued that these
6 responsibilities are mere duties without attendant
7 savings. They have known about them and complying with
8 them is perceived as a cost of 752. Moreover, if only
9 the holding period is instated, the result will be
10 increased crowding and costs. Test claimants point to
11 results of crowding and costs, but they have not
12 demonstrated full compliance with Chapter 752, nor have
13 they distinguished the provisions of 752 from those of
14 pre-existing laws and regulations.

15 The requirements of Chapter 752 were based on
16 shelters with demonstrated success in reducing kill
17 rates. San Francisco's partnership between the SF SPCA
18 and the San Francisco Department of Animal Care and
19 Control was one such model, but there were others as
20 well. No one expects this legislation alone to result
21 in the success reported by San Francisco. No one
22 expects our statewide kill rate of 72 percent to fall to
23 their kill rate of 28 percent, nor does anyone expect
24 that Chapter 752 will cause shelters to run in the
25 black.

26 What has been claimed is that 752 will pay for
27 itself because of the double effect of saving the costs
28 of killing and disposal and bringing in income from fees

1 and fines. Given that double effect, it only takes a
2 small percentage drop in killing for 752 to pay for
3 itself. If shelters were already operating efficiently,
4 legislation could not fine-tune the situation, but most
5 of our public shelters have not come close to operating
6 efficiently.

7 Why wouldn't our shelters choose an efficient
8 model of operation? One reason is that shelter managers
9 have no incentive to reduce killing or costs. A public
10 shelter that shows cost savings will have its budget cut
11 accordingly. Another reason has to do with lack of
12 informed oversight by a state agency or local
13 government.

14 The public cannot serve as a corrective
15 mechanism because they very seldom even know that the
16 pet they are looking for has been impounded and killed.
17 The animal simply isn't at the shelter. In short, there
18 is no legal or financial pressure to operate efficiently
19 so as to save money. Legislation was the only mechanism
20 available to deal with this problem of inefficiency and
21 the resultant costs.

22 That is the end of Professor Bryant's remarks.
23 If there are minor differences between the draft that I
24 understand that the Commission has and the one that I
25 just read, it's because I got this one by e-mail
26 yesterday and apparently she made some other changes.

27 CHAIRPERSON PORINI: Thank you. All right. Are
28 there any questions of these witnesses? Questions in

1 general? Comments? Ms. Steinmeier.

2 MS. STEINMEIER: I have a question for staff.

3 On the basic issue of is this law, is it general

4 application or does it affect just local government?

5 Would you like to comment on that, Ms. Shelton?

6 MS. SHELTON: Certainly. We did analyze that

7 pretty extensively in the staff analysis, but staff

8 admits that you cannot ignore existing law in this area.

9 Existing law does not require the private shelters to

10 take charge of these animals. It states that they are

11 required to take charge of these animals if they are

12 able to do, which leaves them some discretion in that

13 choice. There's no state requirement similar to the

14 requirement imposed on local agencies to take charge of

15 these animals. Therefore we just submit that that

16 existing law cannot be ignored.

17 CHAIRPERSON PORINI: Mr. Beltrami.

18 MR. BELTRAMI: Madame Chair, for Mr. Kaye, have

19 your shelter impound rates fallen --

20 MR. KAYE: I'll defer to --

21 MR. BELTRAMI: -- since this law was passed?

22 Since this legislation was passed?

23 MR. KAYE: -- Mr. Ballenger, who is the chief of

24 our animal care operations, which we regulate, and he

25 can address the issue of generally whether --

26 MR. BALLENGER: Impound rates for dogs has risen

27 since this legislation was enacted, sir.

28 MR. BELTRAMI: So that comment in the last

1 letter we received that public shelters are accounting
2 for so much animal sheltering that public shelter have
3 fallen steadily --

4 MR. BALLENGER: I couldn't speak to -- I
5 couldn't speak to any system outside our own, sir, but I
6 can tell you that our impound rates have risen.

7 MR. KAYE: Commissioner Beltrami, which letter
8 are you reading from?

9 MR. BELTRAMI: Well, this last report we just
10 received that was read.

11 MR. APPS: Taimie's comments.

12 CHAIRPERSON PORINI: This is Ms. Bryant's
13 testimony.

14 MR. KAYE: Oh, okay. I was confused because I
15 was handed as I walked into this room this morning two
16 late filings, and one of them relates to that. It's
17 from the City of Berkeley. I don't know if anyone was
18 here this morning, but they specifically say that their
19 costs have increased and they itemize it and so forth.

20 And then, I guess, Senator Hayden's bill, a
21 another filing, sent out 450 letters, I guess, trying to
22 ascertain things like this. And they got 12 responses,
23 one of which indicated that, I guess, the situation --
24 let's see. What does it say? One of these -- of the 12
25 responses out of the 450 sent out was that the cost --
26 he thought the cost was going to cost him a tremendous
27 amount of money. Instead, he said, he found when he
28 implemented all portions of the Hayden bill, it worked.

1 It lowered the kill rate, increased the adoption rate,
2 and saved him money. So that's one response that we
3 know of out of 450.

4 CHAIRPERSON PORINI: One of the disadvantages of
5 not having the witness here to testify.

6 MR. BELTRAMI: I can read, however.

7 CHAIRPERSON PORINI: I know, but she can't
8 respond to your question, I'm sorry.

9 MR. BELTRAMI: I understand. I understand.

10 Has -- have you raised your fees since the
11 legislation was passed?

12 MR. KAYE: Again, I would defer to Mr. Ballenger
13 to talk about whether we've raised -- I assume for like
14 dog licensing and things like that?

15 MR. BELTRAMI: Yeah. I mean, one of the claims
16 here is that fees can cover these costs.

17 MR. KAYE: Yeah, I don't believe we -- but I
18 would defer to Mr. Ballenger to talk about --

19 MR. BALLENGER: Fees have not been raised yet,
20 sir.

21 MR. BELTRAMI: Thank you.

22 MR. KAYE: Some other jurisdictions, however, I
23 know, Pam, I believe I heard on the news that the City
24 of Los Angeles had raised their fee for dog licensing to
25 about a hundred dollars.

26 MR. BELTRAMI: Have you had to add space because
27 of this legislation?

28 MR. KAYE: Yes, I believe we have. We've had to

1 add additional kennels. You know --

2 MR. BELTRAMI: Do you charge fees for that?

3 MR. KAYE: We try and recover the costs as

4 permitted by law, but the -- basically, a lot of it

5 involves -- not to get into too much of the detail, but

6 the mechanics of how many animals you can put in a cage.

7 So, for example, if you put a Chihuahua in with a

8 St. Bernard, that's lunch. And so we have to separate

9 them out. That creates a need for more cages. That

10 creates a need for larger space, et cetera.

11 MR. BELTRAMI: But capital improvements normally

12 are not funded by fees.

13 MR. KAYE: Again, that's a very technical

14 question, and I think some perhaps might be, but I'm not

15 exactly sure on that point.

16 MR. BELTRAMI: Okay.

17 CHAIRPERSON PORINI: Yes, Ms. Halloran.

18 MS. HALLORAN: May I respond to Mr. Beltrami's?

19 And that is I just want to refer again to the decision

20 in Connell versus Superior Court. In that case the

21 court ruled that whether or not the local government

22 employs -- uses its authority to levy fees, the

23 existence of that authority in and of itself prohibits

24 the costs from being deemed state mandated.

25 CHAIRPERSON PORINI: Mr. Apps.

26 MR. APPS: Thank you, Madame Chair. And if I

27 recall correctly, this Commission has once found before

28 in the situation involving business fees that the

1 ability to raise fees, even if not exercised, precluded
2 reimbursement for the resultant costs.

3 CHAIRPERSON PORINI: Mr. Kaye and then
4 Ms. Stone.

5 MR. KAYE: Okay. Yes. The reason why we're
6 jumping up here is because a very famous case that's
7 close to our hearts was considered by this very
8 Commission back in 1990. We filed a claim on SIDS
9 firefighter training. And in that we were given
10 explicit fee authority, and we had our choice. We could
11 impose a \$3,400 fee on the victims, the parents of SIDS
12 unfortunate tragedies, or we could charge the
13 firefighters for this training. The second appellate
14 court explicitly stated that unless we can realistically
15 recover our revenues, our costs, from the fee authority,
16 even if it's explicitly provided in that, we -- it's
17 unrealistic and we can't use it.

18 Thank you.

19 CHAIRPERSON PORINI: Other questions?

20 MR. ROBECK: I would like to --

21 CHAIRPERSON PORINI: Oh, I'm sorry. Ms. Stone
22 was going to make a comment --

23 MS. STONE: Thank you very much.

24 CHAIRPERSON PORINI: -- on fees, I believe, and
25 then we'll get to your question. I'm sorry.

26 MS. STONE: Exactly. Thank you very much,
27 Chairman Porini.

28 We would concur with the County of Los Angeles.

1 The problem is that the necessary fees that would have
2 to be charged in order to fully recover the costs for
3 kenneling, capital costs, et cetera, would render it far
4 out of the reach of the normal, everyday person and
5 would actually, in fact, discourage adoptions. So
6 whereas it is necessary to impose a fee to offset some
7 of the savings and, of course, we could suggest that if
8 the Commission were to find this to be a reimbursable
9 state mandate, to the extent there are fee revenues
10 received, they would be offset.

11 But the issue is, at what point in time does
12 your increase in fees cover the costs of the mandate
13 exceed what the population is willing to pay. And that
14 is the concern that we have, that the animals be
15 adopted, rather than languish for failure of the people
16 to pay the fees.

17 CHAIRPERSON PORINI: Mr. Robeck.

18 MR. ROBECK: I'd like staff to have an
19 opportunity to talk about the fee question, and then I
20 have another question --

21 CHAIRPERSON PORINI: All right.

22 MR. ROBECK: -- independent of that.

23 CHAIRPERSON PORINI: Camille.

24 MS. SHELTON: Certainly. Let me know if you
25 have further questions after I testify or provide
26 further comment. I will just note that the SIDS case is
27 not a published opinion.

28 I do agree that the Connell case, which is a

1 published opinion, does apply here. In that case, the
2 staff found that the fee authority was sufficient and
3 there is fee authority to cover those costs where the
4 animal's ultimately redeemed by the owner or
5 relinquished by the owner. We also found that fee
6 authority was sufficient when the animal is ultimately
7 adopted. But there aren't any statutes providing fee
8 authority for those animals that are euthanized.

9 CHAIRPERSON PORINI: All right. Mr. Robeck.

10 MR. ROBECK: Yeah. And what fee do you charge a
11 stray and abandoned animal that you pick up?

12 MS. SHELTON: That -- well, statutorily there's
13 nothing required by statute, so I would assume it's left
14 to the discretion of the local agency.

15 MR. ROBECK: Right. But you have no party to
16 charge a fee to.

17 MS. SHELTON: No, that's exactly my point, those
18 animals that are ultimately euthanized.

19 MR. ROBECK: I'm sorry, I want to go to another
20 topic. Did you want to comment?

21 MS. HALLORAN: I just wanted to comment on --

22 CHAIRPERSON PORINI: Ms. Halloran.

23 MS. HALLORAN: Thank you, Madame Chairman -- on
24 your last point. And that is, again, the Connell
25 decision indicates that it is the authority itself that
26 precludes the cost from being state mandated, if there
27 is authority in the legislation for fees. There's
28 authority in this legislation for some of the fees.

1 There is authority in preexisting legislation for animal
2 license fees and matters like that that, in theory
3 anyway, could offset the costs of these mandates.

4 And, again, in the Connell case, the court was
5 quite specific that the reality -- whether the fees are
6 imposed or not is not the issue. The issue is is there
7 authority for the local agencies to raise fees that
8 could offset the costs. If that authority exists, the
9 costs are not state mandated under Government Code
10 7556(a). Excuse me if I have the cite incorrect.

11 CHAIRPERSON PORINI: Mr. Robeck, do you have a
12 follow-up question?

13 MR. ROBECK: Yes. Would staff comment on that?

14 MS. SHELTON: If you turn to page 37 and 38 of
15 the staff analysis, we do provide a list of other
16 statutes, preexisting law, which we do recommend as
17 identifying parameters and guidelines if approved as
18 offsets. These statutes do give fee authority, but
19 there are conditions placed on that fee authority.

20 For example, Food and Agriculture Code Section
21 30652 allows the local agency to have the authority to
22 attribute just a part of the fees collected from owners
23 for dog license tags and fines to pay the salaries and
24 costs and expenses of the enforcement of the animal
25 control and emergency care of impounded animals.

26 Again, Food and Ag Code Section 30520 and 31751
27 also gives the authority to use a portion of the
28 unclaimed spayed or neutered deposits for this type of

1 expense. But again, those are qualified. Those are
2 conditions. And they can't use of all these fees
3 collected to attribute to this program.

4 CHAIRPERSON PORINI: Mr. Robeck.

5 MR. ROBECK: I'd like staff to comment and then
6 the witnesses to comment on the issue of the holding
7 requirements of SB 1785 and specifically how that is
8 different than prior law. I would refer specifically to
9 a three-day period and when that commences and ends
10 versus a four-day period following picking up a stray,
11 and, secondly, whether or not the real standard is six
12 days unless there is certain additional expenses
13 incurred or whether the standard is four days as
14 recommended in the staff analysis.

15 MS. SHELTON: Basically the prior law required
16 that impounded dogs and cats be held for three days and
17 the three days was measured by calculating the
18 difference -- or, excuse me, it was three days measured
19 from the day of capture on.

20 The test claim legislation changed that and
21 required that impounded dogs and cats be held for six
22 business days or -- this is what staff found -- at the
23 discretion of the local agency they can reduce it to the
24 four days if they comply with two conditions, one, make
25 the animal available for owner redemption on one weekday
26 evening or, two, make an appointment with the owner to
27 come and take a look at the animals that are being held
28 for impoundment.

1 Staff was of the position that the full
2 six-day -- business day period was a discretionary
3 choice on the part of the local agency because they can
4 reduce that to four days, so we gave them the
5 four-day -- basically recommended that the four days was
6 the required holding period and then also gave them the
7 recommended reimbursement for complying with those
8 additional activities to reduce the six day to the four
9 day.

10 Now, the difference in increased holding period
11 would be measured by calculating the difference between
12 three days from the day of capture and the four business
13 days from the day after impoundment. And those are the
14 express statutory wishes in the statute.

15 CHAIRPERSON PORINI: Mr. Robeck.

16 MR. ROBECK: Just a follow-up, I'm having
17 trouble with the logic because they're required to hold
18 for six business days after capture. If they want to
19 reduce the holding period that is required in the
20 statute, then they have to incur additional costs which
21 may be a trade-off, which are optional. So it's an
22 optional you have a weekend or evening hours or you have
23 staff come at hours that are beyond your normal business
24 hours or you hold it for six business days. All of
25 those are options, but I don't -- I don't see how
26 that -- that they're -- it's not a series of mandated
27 choices.

28 MS. SHELTON: You can certainly view it that

1 way. I don't disagree with that as an option. You can
2 certainly make that type of a motion. Staff presented
3 their analysis interpreting it a little differently, but
4 there's nothing preventing the Commission from going in
5 that direction.

6 CHAIRPERSON PORINI: Mr. Robeck.

7 MR. ROBECK: Comment from the witnesses?

8 MR. KAYE: Commissioner Robeck --

9 CHAIRPERSON PORINI: Mr. Kaye.

10 MR. KAYE: Yes. We agree with your analysis.

11 One of the reasons why we didn't protest vehemently is
12 that we believe most of the animal shelters would
13 qualify for the four day. But it is -- it is not done
14 that you must do such-and-such in order to qualify for
15 the -- for four days. It's you're given a choice.
16 Either the shelter is open certain hours, in which case
17 they -- they have to accept four days, or they're open
18 other hours, then they have to accept the six days. So
19 that's how we read it.

20 However, staff sort of crafted a -- I don't know
21 what you'd call it, sort of an in-between approach where
22 they said, well, we'll give you four days and the
23 mandatory extra hours of Saturday or evening. So we
24 haven't done any very detailed fiscal analysis to see
25 who would be better off, but nevertheless there may be
26 some animal shelters throughout the state that this
27 would impose a tremendous hardship, switching over to
28 the four-day standard.

1 CHAIRPERSON PORINI: Mr. Figueroa, did you want
2 to comment on that?

3 LT. FIGUEROA: Yes. Well, at Lindsay animal
4 shelter, we initially when we implemented the 1785, we
5 were staying open one evening till 7:00 and we were
6 opening the facility on one weekday. But due to the
7 hardship and the cost factors, we've had on reduce to
8 the -- the working hours to we are holding animals six
9 full days now, but we've had to cut services to the
10 public. We open actually at noon every day now, and
11 we're actually closed on Sundays, when in the past we
12 were also open on Sundays.

13 CHAIRPERSON PORINI: Mr. Robeck.

14 MR. ROBECK: No. That's it.

15 MR. SHERWOOD: Madame Chair?

16 CHAIRPERSON PORINI: Yes, Mr. Sherwood.

17 MR. SHERWOOD: I have another -- my question
18 goes back to the optional question not only to what
19 Mr. Robeck was talking about, but also to the private
20 versus public sector shelters. I think as I look at
21 this it seems to me the staff's analysis on the four to
22 six does make sense to me because I believe it's
23 mandatory to have at least four days with the evenings
24 available, where it's optional to go to six.

25 But that whole optional question brings up
26 another issue to me, and that goes back to page 819 of
27 the Attorney General's analysis. And reading on
28 page 819, there's a couple questions I have. And it's

1 in the second paragraph where it reads the -- "Moreover,
2 the DSA's allegation that private shelters have no legal
3 obligation to take in stray or abandoned animals is
4 simply false. As the comments submitted by Professor
5 Bryant indicate, many --" now, that word there "many" is
6 key to me. Maybe you can give me a little more
7 explanation on that -- "many private shelters have a
8 legal obligation to take in stray animals because their
9 mission statements and bylaws, parentheses, necessary
10 for legal registration to receive federal and state tax
11 exempt status as a nonprofit, require them to take in
12 strays."

13 When I read that, that might indicate to me,
14 No. 1, not all private shelters have to do that, No. 2,
15 that those that do have made an optional decision to
16 become nonprofit, once again optional versus profit
17 motive. I assume there are profit and nonprofit
18 shelters in existence, No. 1. I could be wrong on that,
19 but as I read this, I kind of jumped to that conclusion.

20 So we do have private shelters. We do have
21 those that have made a decision on their own to become
22 nonprofits. And because they've done that, they have
23 then become under the -- this law of this statute
24 affected by it.

25 If I go on, "Private shelters are also legally
26 required to take in strays when they represent to the
27 public, donors, and potential donors that they do take
28 in strays," when they represent that. That, once again,

1 brings back the question of being optional to me.

2 I'd just like the Attorney General if possible,
3 to comment on that. And if I go further down to the
4 next paragraph, it talks about "Thus --" or the next
5 sentence, "Thus, in many instances, private shelters are
6 required by law." In many. So once again we keep
7 coming back to this many or may in this case.

8 MS. HALLORAN: Mr. Sherwood --

9 CHAIRPERSON PORINI: Ms. Halloran.

10 MS. HALLORAN: Thank you. In response to your
11 question, I think your question goes to the issue of
12 whether the private shelter is required to take in an
13 animal or not. And I think the argument in this brief
14 is that in some cases by contract or other provisions,
15 those private shelters are required to take in the
16 animals.

17 I would submit that that question is really
18 beside the point. If -- the issue is does the man -- do
19 the mandates set out in the legislation apply to the
20 privates once they take in the animal. Once they take
21 in the animal, it is clear that the privates are
22 obligated to comply with the same mandates that the
23 shelters are obligated to comply with.

24 And in light of that obligation by both public
25 and private to comply with this mandate, it's Department
26 of Finance's position that this mandate -- these
27 mandates are not exclusive and that this two -- to local
28 government and that this responsibility to care for

1 abandoned animals is simply not borne exclusively by
2 local government agencies.

3 MR. SHERWOOD: Now, is it not true that the
4 public sector does not have this option? The public
5 sector -- shelters are required, period. There's no
6 option. There's no -- do they have an option to get out
7 from underneath the statute? I'm sorry, if you could
8 address that.

9 MS. HALLORAN: Well, I'm not sure I can address
10 that. I believe that in most instances they are, but I
11 believe as comments of Ms. Bryant indicate, there are
12 certain circumstances where even public shelters are not
13 required to take in animals.

14 CHAIRPERSON PORINI: Ms. Stone, Mr. Kaye, you
15 might be able to answer the question.

16 MS. STONE: Yes. If you examine page 16 of the
17 draft staff analysis, the Food and Agricultural Code
18 mandates counties to own and have public shelters. We
19 cannot get out of the business. To the extent that
20 there are cities, the Food and Agricultural Code also
21 requires that cities have places to impound strays as
22 well. So this is why many cities have contracted with
23 either the county or with nonprofit shelters to provide
24 the required services.

25 Cities and counties cannot get out of the
26 business. They can contract their duties, but they
27 cannot get out of it. We would like to contrast that
28 with the private nonprofits which have the ability to

1 change the scope of their services.

2 MS. HALLORAN: It's my understanding that
3 that -- those provisions only apply to strays,
4 Mr. Sherwood.

5 MR. SHERWOOD: I think that's my reading also of
6 it.

7 MS. HALLORAN: Owner-relinquished animals, even
8 public agencies are not required to take.

9 MR. SHERWOOD: Thank you. Okay, thank you for
10 those responses.

11 CHAIRPERSON PORINI: All right. Mr. Robeck.

12 MR. ROBECK: In fact, that's one of the reasons
13 why the SB 1785 discussion two years ago and the
14 legislative debate that's gone on on the subsequent two
15 years, many of the local private, both nonprofit and
16 profit -- I don't know their legal organization --
17 notified their city clients that they were getting out
18 of the business of taking animals or taking nonadoptable
19 animals. And the City of San Francisco, with all due
20 respect, continues to euthanize animals. It's just that
21 the -- the nonprofit shelters refuse to do that. That's
22 the only difference.

23 So, in fact, we do know that private shelters do
24 have the right to refuse and they have rescinded and
25 aggregated their contracts, and that's created a huge
26 crisis.

27 CHAIRPERSON PORINI: Yes, Ms. Halloran.

28 MS. HALLORAN: And, Mr. Robeck, in response I

1 would submit that, again, the issue of whether a private
2 shelter has the right to decline to take in an animal is
3 somewhat akin to the question of whether the shelter has
4 to exist at all, a private shelter. A private shelter
5 doesn't have to exist and, arguably in some
6 circumstances, they don't have to accept a given animal.
7 Once they accept the animal, once they exist and once
8 they take in any animal, these mandates apply. And it
9 is that universal application of these mandates that
10 prohibits reimbursement.

11 MR. KAYE: Madame Chairperson?

12 CHAIRPERSON PORINI: Yes, Mr. Kaye.

13 MR. KAYE: Yes. I think that argument is kind
14 of circular because I think that is the issue. We admit
15 that if a private shelter wants to shoulder the
16 burdensome expense of basically doing our job, then they
17 will have to meet the same requirements that we meet
18 under the Hayden bill. But the threshold question, the
19 initial question is do they have to be in the business,
20 and I submit that they don't have to be in the business.

21 I further submit that local government is
22 almost -- and, of course, we're subservient to the state
23 legislature, but we basically regulate animal care and
24 control in the state of California. There is no state
25 department of animal care and control. The buck stops
26 with us. The federal government hasn't preempted the
27 field, certainly, and so what we have done is we have
28 tried to interpret the Hayden bill in a quick -- quickly

1 fair and reasonable manner to implement its -- all its
2 provisions as best we can.

3 And I think what Commissioner Robeck is -- is
4 referring to is very real. A number -- a major number
5 of those smaller areas, private animal shelters, have
6 basically left the field in this important area because
7 of this. We're not commenting that it's a good thing or
8 a bad thing or anything else other than to say that we
9 are primarily responsible. And certainly viewed in many
10 respects, we have sole and exclusive jurisdiction in
11 regard to animal care and control in California.

12 Thank you.

13 CHAIRPERSON PORINI: Mr. Beltrami.

14 MR. BELTRAMI: Madame Chair, I'd like to second
15 what Commissioner Robeck said and what Mr. Kaye has just
16 said. My daughter works for the Sonoma County community
17 facility, and they have given their notice to the
18 County, which is creating quite a bit of problems in
19 that county, for instance, just as an example. So there
20 is that flexibility on the private side that is not
21 there on the public side.

22 CHAIRPERSON PORINI: All right. Further
23 questions or comments from members? All right,
24 Ms. Steinmeier. We still have some additional witnesses
25 so --

26 MS. STEINMEIER: Oh, okay.

27 CHAIRPERSON PORINI: -- but, yeah.

28 MS. STEINMEIER: This question relates to

1 both -- at least one of the things we talked about. On
2 the question of offsets, I would think besides dog
3 licensing, which also has to go for a lot of other
4 things, the fees charges for redeeming an animal or
5 adopting an animal should be the main offsets or this,
6 since they go directly to the, you know -- to the agency
7 that is housing these animals. And my question, I
8 guess, is for -- for the L.A. County, Mr. Ballenger,
9 have adoptions actually risen and redemptions arisen
10 during this time? Is it working?

11 MR. BALLENGER: Adoptions have risen and
12 redemptions have risen because we lowered our fees.

13 MS. STEINMEIER: You've lowered fees.

14 MR. BALLENGER: Yes, ma'am.

15 MS. STEINMEIER: Plus you hold them longer
16 because of the law.

17 MR. BALLENGER: Yes, ma'am.

18 MS. STEINMEIER: So there is at least some net
19 effect that was the intent of law in that regard.

20 MR. BALLENGER: We -- we reduced our adoption
21 fees to a flat \$27. They were as high as \$100, and our
22 intent was to try and place 2,000 more dogs during this
23 year. So far we've placed about 2,700 dogs -- 2,700
24 dogs and cats since February.

25 MS. STEINMEIER: Has that taken some pressure
26 then off your lack of kill space? Or are you holding --

27 MR. BALLENGER: It's reduced the number of
28 animals we've had to put to sleep.

1 MS. STEINMEIER: Right, animals put to sleep,
2 but your kennel space, how many dogs you have to -- dogs
3 and cats you have to actually hold, is that going up
4 despite that?

5 MR. BALLENGER: We're still -- we're impounding
6 more dogs than we are cats. Cat impounds have been
7 dropping steadily for four years. This predated Senator
8 Hayden's legislation, but dog impounds have risen
9 steadily at least in our agency.

10 MR. KAYE: What about all the other animals
11 covered by the bill?

12 MS. STEINMEIER: Thank you, that helps.

13 CHAIRPERSON PORINI: All right. If we could ask
14 this set of witnesses to go back to your seats, we have
15 some several people who signed in. We'll take a
16 five-minute break right now while we make this change,
17 and you will have an opportunity to comment later.

18 (Recess taken.)

19 CHAIRPERSON PORINI: All right. At this point
20 in time we'll begin our public comment. I'd like to
21 caution the members of the public to just comment on the
22 issues before the Commission. We are not talking about
23 the bill in and of itself. We're here talking about
24 whether there are costs mandated on local governments.

25 So if you would like to begin on the right,
26 Mr. Ward.

27 MR. WARD: Okay. Thank you. I'm Richard Ward,
28 the administrative director for the State Humane

1 Association of California, and you eliminated quite a
2 bit of my speech by that comment, and so I will get
3 right to an issue that -- I think I'm probably the only
4 person here representing humane societies, the shelters
5 that are nonprofit private.

6 And I wanted to comment that we have a choice --
7 "we" meaning humane societies, SPCAs -- not contracting,
8 of closing our doors to accepting animals, even to
9 becoming limited access or as you might know of as
10 no-kill shelters. That is not the case with government.

11 Our neighbors, who we try to work with to solve
12 our pet overpopulation in this state, are being impacted
13 by the Hayden bill because of the choices of humane
14 societies to pull away from doing contracts and putting
15 themselves into positions of liability when handling
16 stray animals. A lot of our noncontracted humane
17 societies in the past have accepted stray animals and
18 then turn them over to animal control agencies, but
19 that's even changing because of the more mandates that
20 are imposed by our California legislators.

21 I think too that one of the things that gets
22 confusing is that we keep saying the number of
23 euthanasias are decreasing, the number of adoptions are
24 increasing, but we also have to remember that the
25 population of state is increasing. So we're finding
26 more and more pet owners -- I hate to use the word
27 "owner," but more and more people who are choosing to
28 live their life out with pets. And as a result, the

1 problems are growing, and we need more space to handle
2 those increases of animals entering our shelters.

3 What the Hayden bill did was it required that we
4 hold animals longer, and as a result that requires more
5 space. And if anybody can't see that, it's really hard
6 for me to believe that it's not obvious.

7 As we stated in our letter, we think it's
8 totally unreasonable to enact legislation to increase
9 service levels without providing necessary funding to
10 ensure its total compliance and success. When we
11 supported -- we opposed the Senate bill 1785 mainly
12 because of the fact that it did not include a way of
13 recovering costs and also that we felt that trying to
14 impose so many mandates on shelters, both private and
15 public, didn't give them enough time to comply.

16 That's why there's been recent legislation
17 introduced to try to put off another big date that's
18 coming up which requires holding surrendered animals as
19 long as strays, which is going to be probably another
20 one of these debates in around 2002 when we will
21 probably be coming again back to you asking for you to
22 fund that mandate.

23 If I were to present the facts related only to
24 the issue to anybody outside of government and the
25 animal protection movement, they would probably say that
26 the mandates of 1785 increase costs and services.
27 Because of so much dialogue that has taken place, it is
28 confusing the issues that really, I think, are disguised

1 by a lot of emotional issues and terms.

2 It comes down to basically one of if you
3 increase mandates, in this case increase required
4 holding periods, recordkeeping, veterinarian care, all
5 the above, it's going to increase the costs, and that
6 cost has to be paid by somebody.

7 You cannot hope to recoup those costs by
8 increasing your costs to the pet owner by increasing
9 fees. All that does is leads to animals being left in
10 shelters, not redeemed. As you increase your impound
11 fees, your redemption fees -- and I have had this
12 experience running three large animal control programs
13 to the state of California -- in all of them, when we
14 increased our fees, we always saw an increase in the
15 number of animals not being redeemed.

16 Thank you.

17 CHAIRPERSON PORINI: Thank you.

18 Dolores Keyes.

19 MS. KEYES: Yes. Good morning. Thank you very
20 much for listening to me this morning. I'm the general
21 manager of Coastal Animal Services Authority. That's
22 located in San Clemente in Orange County. We have a
23 small shelter. We're a little bit unique. We've been
24 in the business as a joint powers authority for about
25 three years. We have two member cities, Dana Point and
26 San Clemente.

27 We were set up with the idea of being as
28 prohumane as possible, and that meant that we, the

1 authority, decided on the creation of our agency that we
2 would not take relinquished animals, we would only
3 accept stray and abandoned animals, which makes us a
4 little unique in the animal control field. We do
5 provide all of the normal animal control services to the
6 cities, however.

7 We consider ourselves prohumane because of our
8 commitment from our communities. We have a fairly large
9 budget. We have 180 active volunteers. We have a large
10 contingent of veterinarians in the community that assist
11 us with our veterinary care. We don't have a
12 veterinarian on staff. We have always held our animals
13 five days, a minimum. We do, I think, an outstanding
14 job in fostering difficult animals and doing an extra
15 step or two. Our euthanasia rate is about 8 percent.
16 That's just on stray and neutered -- that's just on
17 stray and abandoned animals.

18 When this bill was passed, we felt it was a
19 noble attempt to kind of bring things along and see some
20 progress in some of the other shelters, and we didn't
21 think it was going to impact us. We were already in
22 compliance with most everything that the law prescribed.

23 However, since that time, we found that it has
24 impacted us in ways that we never considered. We have a
25 small shelter, as I said. We have about 1,700 live
26 animals that come in every year. However, since this
27 bill was passed, we have found that our medical bills
28 have increased by 22 percent from fiscal year 98/99 to

1 fiscal year 99/00. In this fiscal year alone, and
2 that's only one quarter, as you, I'm sure, know, we've
3 already spent 50 percent of what we spent last year.

4 Now, this is with the same number of animals,
5 pretty much, and with two volunteer groups assisting us.
6 Each volunteer group is connected to the City, to a
7 member city, and they have seen their medical costs
8 increase -- excuse me -- 15 percent in this same period
9 of time.

10 What's happening is that we're seeing the
11 participating vets who have offered their services
12 sometimes at discounts, sometimes for free, say that
13 they're overwhelmed and overloaded. They're seeing
14 these animals more and more frequently. They're seeing
15 them three or four or five times before they're
16 available for adoption. They are not seeing what they
17 hoped to see, which was give an animal some care, see it
18 adopted or claimed, find a new client. That's not
19 happening with them.

20 In fact our most avid supporter veterinarian
21 recently wrote me a letter that said, "I still want to
22 work with you; however, I will no longer give you any
23 free services. The discounted services that used to be
24 at 50 percent are now at 20 percent." And that's
25 because he's overwhelmed.

26 I was surprised and shocked, and so I sat down
27 and had dinner with him and he said, "You know what? My
28 staff is overwhelmed. I'm overwhelmed. We cannot do

1 what we had done for you in the past."

2 That's a huge impact. That's just this summer,
3 and that's going to have a huge impact on our shelter
4 overall.

5 One of the other things that we're seeing is in
6 addition to the hard data about our medical costs going
7 up, we're finding that harder-to-adopt animals are
8 coming into the shelter. You know that trickle-down
9 effect term we used to use? Well, it's hitting us.
10 It's hitting the shelters that are more able to provide
11 some of the services on the long-term basis.

12 Our average length of stay for a dog or a cat
13 three years ago was 28 days. Our average stay for a dog
14 or cat now is 48 days. We do everything we can within
15 that period of time to rehabilitate them, to get them
16 ready for adoption, and we do a pretty darn good job, I
17 have to say, but it really has cost us a great deal of
18 money.

19 Our entire budgets have gone up. We're hiring
20 another kennel attendant. Our volunteer groups are
21 saying that they are having difficulty in raising enough
22 money, and they want to know whether or not there's
23 going to be any ceiling to this. They're certainly
24 going to continue supporting us. But I'd like the
25 committee to know what impact this has had on shelters
26 that have already kind of set themselves up to do what
27 this law said it was going to do.

28 So you can see, even a shelter like ours, small

1 and progressive, has seen a definite fiscal impact that
2 includes higher vet costs, higher staffing costs, new
3 in-house services.

4 We now have behaviorists and trainers that we
5 pay on a regular basis to come in and help us
6 rehabilitate the dogs in particular. We have a foster
7 care system that includes this summer 125 cats in foster
8 care by volunteers, but we pay for their food -- not the
9 volunteers' food, but the cats' food. We pay for the
10 animals' food when they're outside of the shelter until
11 they can be rehabilitated enough to come back into the
12 shelter system, and we do adopt out. We do claim.

13 All of that and all of these numbers have not
14 changed much. All of our claims are about the same.
15 Most of the animals that are claimed are claimed within
16 the first two days. Actually, it's less than two days
17 in our -- in our statistical averages.

18 But it's really made a huge impact on us. We
19 have less than 1,700 animals last year that were live
20 that came into our shelter. I cannot imagine what this
21 means to shelters that are handling 30,000 animals.

22 Thank you.

23 CHAIRPERSON PORINI: Thank you.

24 Greg Foss.

25 MR. FOSS: Thank you, Madame Chairman. My name
26 is Greg Foss. I work for the County of Mendocino. I'm
27 the animal control director there.

28 My comments today are in reference to page 37 of

1 the staff comments, staff recommendations, in the second
2 paragraph where they refer to fees and how they will be
3 collected and used as an offset in savings for a balance
4 of the program without any apportionment being directed,
5 other than to say it says to pay fines, to pay salaries,
6 costs and expenses for the enforcement of animal
7 control.

8 In reading the -- the code section that defines
9 the use of those funds, it refers specifically to first
10 being paid for the license fee program or the collection
11 and issuance of dog licenses, second, to pay for
12 salaries, third, for livestock, and, fourth, to pay for
13 injured animals. So my remarks are I would -- I would
14 want the Commission to consider how they would intend to
15 use those fees and under what guidelines and structures
16 because those fees may have already been absorbed in the
17 county's budget or in a city's budget or in a humane
18 society's budget for other purposes before they even get
19 down for the purpose of using for emergency animal care
20 or some other salary or fee as a result of these new
21 activities.

22 CHAIRPERSON PORINI: All right.

23 MR. FOSS: Thank you.

24 CHAIRPERSON PORINI: Thank you.

25 Lois Newman.

26 MS. NEWMAN: Oh, good morning, Commissioners.

27 My name is Lois Newman. Thank you for hearing me. I am
28 founder and president of the Cat and Dog Rescue

1 Association of California, a nonprofit public benefit
2 corporation.

3 This morning I would like to discuss three
4 issues that we do not feel that the staff analyst
5 correctly addressed. The first is the number of private
6 shelters in the state of California which must follow
7 the holding periods and other statutes of Chapter 752.
8 From what you -- the information you received, we have
9 done a great deal of research. You should see our phone
10 bills.

11 Our research shows at the time of this statement
12 today that at least half of the shelters in California
13 are private shelters which either take in cats and dogs
14 which are strays and owner-surrendered animals by their
15 mission statements, and those are -- just take in owner
16 surrenders and therefore have to follow the statutes of
17 Chapter 752.

18 I run a nonprofit organization, okay? I'm not a
19 lawyer, but I have to tell you I keep up on the law. If
20 our mission statement -- which it doesn't -- said that
21 we take in strays, we have to take in strays. That is a
22 law. I am sorry Professor Bryant isn't here because she
23 teaches nonprofit law. You might ask her this question.
24 Furthermore, if I say we take in strays and
25 owner-surrendereds and I don't, we are guilty of fraud
26 and we can go to jail. So the mission statement is very
27 important.

28 In the information we sent to the staff analysts

1 draft report, we showed you 35 to 40 different mission
2 statements from shelters all over the state of
3 California who in their mission statement say they take
4 in strays as well as owner-surrenders, and they must do
5 that. The only thing that stops them is space. And I
6 will tell you, when I've gotten on the Internet and
7 looked at many of these websites, these people are going
8 out and buying three to five acres and building shelters
9 on them. These are private shelters.

10 There were 187 private shelters surveyed in our
11 reply to the draft analysis. We have new lists and
12 surveyed more by their online websites to bring that
13 total to 195 shelters that take in strays and
14 owner-surrendered animals. If there were enough time, I
15 would have surveyed almost 500 additional California
16 shelters. This is in addition to what I sent you that I
17 have found of California shelter lists.

18 With the duplicates that are in here, we still
19 figure that there are 100 to 150 more private shelters
20 of which 95 percent are private shelters. In our -- we
21 sent in a seven-and-a-half-page statement to the draft
22 analysis, and I would ask you to read that because we go
23 through this statistically. Nationally -- and we have
24 the footnote there. Nationally there are more private
25 shelters than there are public shelters, and in
26 California there are more private shelters than there
27 are public shelters.

28 In addition, we found three additional bird

1 rescues, five additional tortoise and turtle rescues.
2 There's a rat rescue association and a hamster rescue
3 association. So far that -- this means that private
4 shelters equal the public shelters and must follow the
5 Chapter 752 statutes, and therefore the state mandate
6 provision does not apply.

7 The second item is test claimants included the
8 re -- included the reasonable practice forum in their
9 reply. On page 11 the definition of medically treated
10 states, medically treated as -- is defined as any
11 procedure performed or medication administered to the
12 animal. We argued in our reply that sodium
13 pentobarbital given to an animal is a medical procedure,
14 and this definition reinforces that claim.

15 Sodium pentobarbital is a Class II-N drug under
16 DNA -- DEA definition -- I spent 15 minutes on the phone
17 with a DEA agent -- and therefore is a medical
18 procedure. Veterinarians have been required for many
19 years to keep records of each individual receiving this
20 drug, and this includes an animal which is euthanized.
21 And therefore this recordkeeping is required by law
22 before Chapter 752 was enacted and before 1973 and
23 should not be a state mandate.

24 The last and most important item is that of the
25 fiscal irresponsibility of public shelters in this state
26 and their failure to use statutory authority to apply
27 the cost of treatment and general care of animals in
28 their shelter. On page 37 of her analysis, the staff

1 analyst says that after the state mandates for certain
2 items has been declared, that then the arguments can be
3 made for offsets to the mandate. We strongly believe
4 this is backward. If the public shelters have not been
5 using statutory authority to collect monies they can use
6 for shelter operations, then we need to know how much
7 they should be collecting first before a mandate is
8 declared.

9 Public shelters are losing money in many ways.
10 For example, this year they are losing at least
11 \$16 million in uncollected dog license fees. Attached,
12 I have a copy here, which is the annual report of local
13 rabies control activities in 1997 showing the number of
14 dog licenses issued in California. It was about
15 1,875,000. These are domesticated dogs. In 1996 the
16 American Veterinary Medical Association -- and I have
17 the proof here -- estimated that there were at least
18 6,800,000 and -- I mean 484,692 domesticated dogs in
19 California. In 1977, it's fair to say, there were
20 600 -- 6,684,692 dogs. This means that about 4,800,000
21 dogs that should have been licensed were not.

22 Extrapolating these figures, in this year, 2000,
23 there should be about -- there should be about 7,300,000
24 dogs in California. There are about 5,300,000
25 unlicensed dogs, hence the \$16-million figure.

26 Also included are figures from 1990 -- from 1970
27 to 1997 of the -- 1997 of the California animal control
28 dog statistics. The largest amount of dogs ever adopted

1 in this state was 22 percent in 1994. In 1997 only
2 16 percent were adopted. As we stated in our reply to
3 the draft report -- and it is my favorite mantra --
4 euthanasia is revenue negative, adoption is revenue
5 positive. As we also stated, the national figure to
6 euthanize an animal is approximately \$100. This is from
7 the time of capture to the time it is rendered. We've
8 also included an analysis of the number of cats
9 euthanized.

10 What we see here is the real fiscal failure and
11 irresponsibility of public shelters. They are simply
12 not interested in adopting animals. Most public
13 shelters have volunteers. Volunteers' -- and I have
14 been one -- greatest job is to adopt to a good home.
15 Every public shelter in this state can get free
16 publicity about their adoption programs, newspapers, in
17 the media, over the Internet, and in meetings of
18 community organizations. This costs nothing. It is our
19 estimation that public shelters statewide are losing as
20 least \$50 million a year in revenue because of poor or
21 nonexistent public adoption programs, and we think our
22 estimate is very low.

23 Finally, by statutory authority, shelters are
24 allowed to collect for medical costs -- in fact,
25 Dr. Mangiamele did so when she was the chief
26 veterinarian in the City of Los Angeles -- vaccinations
27 as well as for the actual costs of keeping an animal.
28 It is our estimation that public shelters statewide are

1 losing another \$40 million by not charging for the
2 actual costs of whatever it is they are performing. Our
3 total estimate for what shelters are losing a year is
4 \$106 million. And, again, I think it may be \$50 million
5 higher, but this is a good low-ball estimate.

6 If shelters in California were run in a
7 businesslike way, then there would have been -- they
8 would have been recovering their costs of operation for
9 many years. A very good example of poor fiscal
10 management is the current practice of the County of Los
11 Angeles Animal Care and Control Agency.

12 They currently charge only a \$27 fee to adopt a
13 dog. This is made possible by grants to cover the cost
14 of neutering and spaying. We have determined that there
15 were no restrictions placed upon these grants. So
16 instead of making money because the grants to the
17 County -- because of the grants, the County is losing
18 money because they can charge their full regular price
19 for adoption before grants and come out way ahead.

20 The City of Los Angeles, which I know very well,
21 just raised its dog adoption fee to \$91, but we tell
22 people who call us, this is a bargain for a dog over
23 four years -- four months old. This includes neutering
24 and spaying, a DHLPP shot, a rabies shot, its license
25 fee, and a microchip. That's a bargain. If I had to go
26 to a private vet, I couldn't get that for anything. And
27 the same thing for cats. They get all services, but the
28 adoption fee for a cat is lower.

1 In our statement to the draft analysis, I had
2 here listed ten or eleven shelters that I personally
3 called on the day that I said that I called. And the
4 adoption fees went from \$20 to \$130, but the \$130 was
5 from the County of Sonoma, not the SPCA, not the private
6 one, but the County of Sonoma. And in a personal
7 telephone conversation with the director there, he told
8 me his adoption rate has not gone down. It is a false
9 assumption that if you charge more your adoption rate
10 will go down. Frankly, people value animals far better
11 if you charge them more.

12 CHAIRPERSON PORINI: Ms. Newman, I see that you
13 have multiple pages.

14 MS. NEWMAN: No. No. These -- these are the --
15 I just have -- these are the statistics.

16 CHAIRPERSON PORINI: Could you summarize --

17 MS. NEWMAN: Yeah. Yeah, I will.

18 CHAIRPERSON PORINI: -- your closing now?

19 MS. NEWMAN: Now, this is only one example of a
20 poor shelter financial position. As I say, shelters do
21 not -- public -- private shelters who say they do what
22 they must do, they must do or else they can be charged
23 with fraud.

24 The public now demands better treatment for
25 animals. They do not want to go through a shelter and
26 see animals in pain from unstabilized -- not treatment,
27 just unstabilized broken bones and sitting in pools of
28 blood. And please don't tell me this is an exception

1 because I've been in too many shelters.

2 You are not -- and as I say, as Professor Bryant
3 pointed out, there is no law stating that a shelter must
4 take in owner-surrendered animals. It does not exist,
5 and therefore we respectfully request that Chapter 752
6 not be made a state mandate.

7 Thank you.

8 CHAIRPERSON PORINI: Thank you.

9 Patricia Wilcox.

10 MS. WILCOX: Hi. I'm Patricia Wilcox with the
11 California Animal Control Directors Association, on the
12 board. I represent the County of Sacramento, which is a
13 sheltering operation that brought in 23,266 animals last
14 year. We serve about 800,000 people.

15 Statewide animal sheltering agencies are
16 experiencing costs for medical care for lost, stray,
17 abandoned, and relinquished animals because of the new
18 law. As an example, in Sacramento County we are finding
19 ourselves required to put together an isolation kennel
20 with a medical examination care room. The animals which
21 were previously cared for and comforted are now provided
22 with veterinary care, taken to contract veterinarians at
23 significantly high costs.

24 California Animal Control Directors Agencies
25 throughout the state are incurring -- encouraging --
26 incurring, I'm sorry, incurring significantly higher
27 costs related to treating animals. It is not reasonable
28 to expect us to recover our costs with dog license fees.

1 People are not willing to pay more.

2 Thank you.

3 CHAIRPERSON PORINI: All right, thank you.

4 Kate Neiswender.

5 MS. NEISWENDER: At this point I'm here with my
6 second hat of the day, which is on behalf of Senator Tom
7 Hayden, who is the author of SB 1785.

8 When this measure was written, it was written as
9 a series of actions taken as a whole, designed to
10 increase adoptions and to reduce killings. In the law
11 when you are interpreting a statute, the courts have
12 repeatedly held that a statute must be reviewed as a
13 whole. You're not allowed to piecemeal the statute or
14 to take one piece and elevate that to a different level
15 than the rest of the law.

16 But that's exactly what happening here. Test
17 claimants want to take the one piece of 1785, the longer
18 holding periods, and ignore the other portions of the
19 law. The Hayden shelter law takes on the low adoption
20 rate and the high kill rate in this state in two ways:
21 No. 1, it seeks to increase adoptions by increasing
22 community outreach through worker friendly hours, those
23 are the evenings and weekends, and by lost and found
24 postings.

25 It also seeks to increase adoptions, thus
26 decreasing shelter costs for killing and disposing of
27 animals by mandating shelter cooperation with owners and
28 potential adopters, including rescue operations and by

1 holding lost animals longer so owners can find their
2 pets. Unless all of these pieces are implemented, all
3 of them, the law is a tripod with a leg missing. And
4 today, unless the state mandates analysis reviews this
5 law as if all the pieces are in effect, any decision
6 will also be unfair and unbalanced.

7 The fact is the test claimants are complaining
8 the longer holding periods cost money, but as was found
9 in the original finance analysis, if all pieces are
10 implemented, there is a net effect of no new costs at
11 all.

12 A few examples: There's no legal mandate for
13 shelters to take in and kill owner-relinquished animals.
14 We've heard that a half dozen times today. Post passage
15 of 1785 shelters in Santa Barbara and at Siaca
16 (phonetic) in the Los Angeles County area were accepting
17 owner-relinquished pets and then having the owner sign a
18 release saying that they could immediately kill the pet.
19 This is clearly, unambiguously against the law. These
20 gratis euthanasias cost the shelter money, but there was
21 no legal obligation on the part of the shelter to do
22 this for the public.

23 As Professor Bryant noted in her paper submitted
24 earlier, the cost of euthanasia is approximately \$100.
25 No fee is collected from the purported owner for the
26 gratis euthanasia, yet if that same person took that
27 animal to a vet, they would have to pay a fee for the
28 animal to be killed.

1 On the other hand, if the shelter held that
2 animal for the period required under 1785, it might be
3 adopted and there would be a net financial benefit to
4 the shelter of \$80 or \$90 before collecting an adoption
5 fee. By the way, studies now show that
6 owner-relinquished animals are the most adoptable
7 animals in a shelter. Between the adoption fee and the
8 savings for not killing the animal, the shelter would
9 get a net benefit of \$120 or more per animal.

10 Example 2, we have reports from shelters in L.A.
11 and Orange County that found animals are not scanned for
12 microchips. In Carson, which is an L.A. County shelter,
13 the scanner was broken for more than a year. After that
14 the workers claimed they were untrained so no effort was
15 made to locate owners. Many animals were euthanized as
16 a result and yet a chipped animal has an owner and it's
17 generally an owner who cares but it costs money to chip
18 a pet.

19 So by failing to scan, again, the shelters are
20 losing money in impound recovery fees and spending money
21 on euthanasias. This is fiscally irresponsible, yet
22 test claimants now want this Commission to bail them out
23 for their own irresponsible behavior.

24 Example 3, in the past there was a requirement
25 for a shelter to take a spay/neuter deposit from an
26 adopter and hold the deposit until proof of altering was
27 provided. There were deposits that were never claimed,
28 and the law stated -- and this was pre-1785 -- that the

1 money had to be used for community outreach on spay and
2 neuter issues.

3 In Sacramento, Fresno, and we believe L.A.
4 County, shelters had taken these deposits in violation
5 of law and put them in the general fund, thus spay and
6 neuter outreach was left unfunded. The same is
7 happening with dog licensing as Ms. Newman pointed out.
8 The Commission has been provided with some pretty
9 startling number on this.

10 It's important in several ways. If an agency
11 fails to perform community outreach and fails to license
12 animals, then it's going to lose money. Secondly, if it
13 fails to license, it won't be able to find owners and
14 will have to bear that \$100 cost of euthanasia per
15 animal. Again, these shelters are acting fiscally
16 irresponsible and asking you to take care of it. The
17 holding periods have to be reviewed in conjunction with
18 all other pieces of the shelter law.

19 The final example, failure to work with rescue.
20 I have specific and detailed information under oath from
21 rescue organizations in several communities saying
22 shelters refused to release to rescue or that animals
23 with rescue holds are being killed before the required
24 four-day holding period is over. Commonly, shelters
25 won't release pit bulls to pit bull rescue
26 organizations. Rottweilers are choused to their rescue
27 organizations, saying all such animals, regardless of
28 individuality, are temperament problems.

1 There are more examples, but in each case a
2 failure to follow any one portion of the law costs the
3 shelter money. By failing to follow all the law, the
4 shelters pay. For failure to work with rescue, they
5 pay, for failure to look for owners through microchip
6 scanning and licensing. They pay for volunteering to
7 kill owner-relinquished pets. They pay by longer
8 holding periods for strays whose owners could have been
9 found. They pay for euthanasia of animals that could
10 have been taken by rescue, and they pay by losing
11 licensing fees and adoption fees.

12 One more issue, it was referenced by Mr. Kaye a
13 little earlier today. In August and September of 1999,
14 the Hayden office sent out letters to every public and
15 private shelter we could locate asking for comment on
16 the law. Positive or negative, we wanted comment. Is
17 it working? Is it not working? Why?

18 Of the more than 450 letters that we sent out,
19 we've received only a few dozen letters, written
20 responses, in return. I got a lot of phone calls, but
21 very few written responses. The letters that were
22 received were overwhelming in favor of the law. And
23 perhaps it was because who they were responding to.

24 The best response I received was actually a
25 phone call from the director of the Inland Valley Humane
26 Society. It's a contract shelter. It covers more land
27 than any other shelter in the state. The director said
28 he hated 1785 when he first saw it. He thought it was

1 going to cost him a tremendous amount of money. Instead
2 he told me that when he implemented all portions of that
3 law, it worked. It lowered the kill rate, increased the
4 adoption rate, and it saves him money.

5 It works. But it only works if all pieces of
6 the law are put into effect. You can't pick and choose.
7 Test claimants have not fully implemented the law and
8 the claim is invalid for that reason alone, and we ask
9 you to deny it.

10 CHAIRPERSON PORINI: All right.

11 Dena Mangiamele.

12 DR. MANGIAMELE: Good morning, Commissioners.
13 Sorry for my back to all of you.

14 CHAIRPERSON PORINI: That's all right.

15 DR. MANGIAMELE: You understand. My name is
16 Dr. Dena Mangiamele, and I am a veterinarian. I also
17 have a Master's Degree in preventive veterinary medicine
18 with an emphasis in public health. And I also completed
19 a one-year residency with the State of California
20 Department of Health Services in veterinary public
21 health.

22 My history in the sheltering world is that I was
23 the chief veterinarian for the City of Los Angeles for
24 four years, where impounds at those six shelter
25 locations reach numbers up to around 80,000 animals per
26 year. I am currently the director of the San Diego
27 County Department of Animal Control, and we provide
28 animal control services for nine cities. We have three

1 shelters where we impound approximately 40,000 animals
2 per year.

3 Before we address the issues today, I'd just
4 like to make three quick comments. In reference to some
5 comments on the number of private versus public
6 shelters, it's really not the number of shelters that's
7 the issue. It's the number of animals impounded at
8 those locations. Private shelters couldn't possibly
9 impound 80,000 animals a year as they do in some of the
10 large public agencies where I have worked.

11 In regards to owner-relinquished animals that
12 are signed over for euthanasia, I just wanted to make
13 sure that folks know, because I have worked in the
14 trenches, that many of those animals are signed over due
15 to severe behavior problems, which may be a public
16 safety risk, chronic illnesses, and irremediable
17 suffering.

18 In response to rescue concerns, many animals
19 aren't released for public safety concerns and
20 temperament and behavior reasons. And admittedly
21 rescuers are overwhelmed with the numbers they currently
22 do have in their possession and they may not be able to
23 pick up animals the day they say they will, within five
24 days or within a week or so. And when you have a large
25 impound shelter, those days may mean lives of other
26 animals. I just wanted to make that clear.

27 The Department of Animal Control in San Diego
28 County appreciates the opportunity to address you today.

1 And John Humphrey, sitting here next to me, is also
2 going to do a combined presentation where he will make
3 three points and I will make two, so we won't take up
4 too much of your time.

5 The first point, we agree with the findings and
6 recommendations contained in the final staff analysis of
7 October 13th with the five following exceptions: The
8 first, we respectfully request that the Commission amend
9 and adopt the alternative staff recommendation contained
10 the footnote 42 on page 35 and also reimburse local
11 agencies for the increased costs to care and maintain
12 impounded animals and to provide veterinary treatment to
13 impounded animals other than injured cats and dogs for
14 those animals that are ultimately attempted and released
15 to a new owner or nonprofit adoption organization.

16 Commission staff made a finding on page 4, 34,
17 and 35 that local agencies have the authority to assess
18 fees for the care, maintenance, and veterinary treatment
19 of impounded animals that are ultimately adopted and
20 thus staff finds that there are no costs mandated by the
21 state. While this may be true in a literal sense, as a
22 practice matter, public animal shelters cannot charge an
23 adoption fee sufficient to pay for the mandated program
24 that covers care and veterinary treatment costs.

25 In other words, public shelters are constrained
26 from charging a fee equal to the full costs incurred in
27 providing care and veterinary treatment for unclaimed
28 animals that are ultimately adopted. In these cases,

1 such an adoption fee would amount to a substantial and
2 prohibitive level that in effect promote euthanasia and
3 reduce the rate of adoptions, which is not what we're
4 interested in.

5 Setting adoption fees to include care and
6 veterinary treatment costs would run counter not only to
7 current practices but also to one of the express
8 legislative intents of Senate Bill 1785, which is to
9 promote the adoption of animals and to reduce the rate
10 of euthanasia.

11 Ironically, if approved by the Commission, this
12 staff finding could encourage some agencies to raise
13 adoption fees to reflect care and veterinary treatment
14 costs, and limit adoption availability to a required
15 holding period in order to obtain some reimbursement
16 from the state after an animal is euthanized.

17 My second point involves owner relinquishment.
18 We respectfully request that the Commission consider the
19 practical impact on local agencies from implied
20 obligations imposed by Food and Ag Code Section 31754
21 relating to owner-relinquished animals and recognize
22 this section as a reimbursable state-mandated duty. We
23 agree with the staff comment on page 15 that the intent
24 must be gathered from the whole of a statute rather than
25 from isolated parts or words in order to make sense of
26 the entire statutory scheme.

27 As a practical matter, public animal shelters
28 cannot turn away owner-relinquished animals, a practical

1 matter, but must accept relinquished species impounded
2 by pounds or shelters as a governmental function of
3 providing a service to the public. Likewise, public
4 animal shelters are constrained from charging owners a
5 relinquishment fee sufficient to pay for the mandated
6 program that fully covers impoundment, care, veterinary
7 treatment, and disposition costs.

8 As in the case of adoption fees noted above,
9 relinquishment fees set on a cost-recovery basis would
10 amount to a substantial and prohibitive level that would
11 in effect promote animal neglect and abandonment.

12 And before I turn over the last final points to
13 Mr. Humphrey, I would also like to request from the
14 Commission that the equal privileges be bestowed on
15 those testifying today as those given to Ms. Bryant.
16 She will now have the opportunity to review testimony
17 over a period of time and develop a response.

18 I would also like to respectfully submit the
19 comments delivered on behalf of Ms. Bryant, which I
20 quote, shelter managers have no incentive to reduce
21 killing. Not only is this statement untrue, but it is a
22 offensive to all who work in the trenches handling and
23 becoming attached to hundreds of animals daily.

24 From these statements it is blatantly obvious
25 and frankly disappointing that Ms. Bryant does not have
26 a realistic nor accurate account of a shelter
27 environment nor the devoted folks that have made the
28 choice of a career in helping animals.

1 Thank you, and I defer to John Humphrey.

2 CHAIRPERSON PORINI: Mr. Humphrey.

3 MR. HUMPHREY: Thank you, Commission members.

4 In addition to Dr. Mangiamele's comments, we
5 recommend the Commission amend staff findings and the
6 related final bulleted recommendation on page 37 by
7 insertion of the word "injured" when describing the
8 class of cats and dogs for which veterinary care is not
9 reimbursable.

10 We agree with the following final Commission
11 staff analysis positions related to veterinary care,
12 these three points: Staff finds that local agencies
13 were not required to comply with the provisions of Penal
14 Code Section 597.1 prior to the enactment of the test
15 claim legislation on page 30.

16 Secondly, based on the language of section
17 597(f), staff finds that local agencies had a
18 preexisting duty to obtain necessary veterinary care for
19 injured cats and dogs, thus staff finds that providing
20 necessary and prompt veterinary care for injured cats
21 and dogs does not constitute a new program or higher
22 level of service, again page 30.

23 Staff also found on page 31 the word "care" in
24 section 597(f) does not include veterinary treatment.
25 While the staff used the word "injured" in two of its
26 findings pertaining to cats and dogs on page 30, it
27 appears that by oversight or some other reason staff
28 omitted the word "injured" in two key findings on

1 page 31, therefore we disagree in part with the staff
2 finding that the requirement to provide prompt and
3 necessary veterinary care for abandoned animals other
4 than cats and dogs is new on page 31. And we also
5 disagree in part with the related staff finding that
6 providing prompt and necessary veterinary care for
7 abandoned animals other than cats and dogs as required
8 in Civil Code Section 1834 and 1846 is new.

9 Insertion of the word "injured" again in
10 describing the class of cats and dogs for which
11 veterinary care is not reimbursable will bring
12 consistency to the Commission staff findings and
13 recommendations and will provide fairness to local
14 agencies. Without this amendment, local agencies would
15 be required to cover veterinary care costs without
16 reimbursement for the fairly large class of unclaimed
17 impounded cats and dogs that are ill or that have some
18 other treatable medical condition not associated with an
19 injury.

20 Our next point is, again, we note with agreement
21 with the staff analysis that local agencies were not
22 required to comply with the provision of Penal Code
23 Section 597.1 prior to the enactment of the test claim
24 legislation on page 3. Therefore we respectfully
25 request that the Commission also reimburse local
26 agencies for providing care and treatment during the
27 required 14-day holding period for animals lawfully
28 seized pursuant to Penal Code Section 5971(f) or (g) in

1 those cases where permitted charges are not paid by the
2 owner or ordered by a court. The animal is deemed to
3 have been abandoned, and such animal is lawfully
4 disposed by the impound officer or agency.

5 Likewise we agree with the staff conclusion on
6 page 21 that while some holding period is implied in
7 Section 597(f), there was no prior state or federal law
8 mandating local agencies to hold these animals for any
9 time period. Except for injured cats and dogs, Penal
10 Code Section 597(f) did not reference or specify a
11 holding period, but subdivisions (h) and (i) do provide
12 a 14-day holding period for animals properly seized
13 under this newly mandated section.

14 While Section 5971 does provide a scheme through
15 which local agencies may recover costs from an owner, if
16 known, under (h) and (k), it also contemplates
17 situations where an owner could fail to pay charges,
18 again in subdivision (h).

19 Reimbursement under subdivision (k) would
20 require a person be charged with and convicted for a
21 violation of this section, and obviously not all
22 seizures authorized by this section result in criminal
23 charges being filed, and not all criminal prosecutions
24 result in a conviction.

25 Finally, we respectfully request reimbursement
26 for the postseizure hearings required by Penal Code
27 Section 5971, subdivision (f), in those cases where it
28 is determined the seizure was justified and for the

1 preseizure hearings required by Penal Code Section
2 597.1(g), even in cases where an owner redeems an animal
3 lawfully impounded under this section and/or is
4 convicted of a violation. The cost recovery provisions
5 of subdivision (h) and (k) extend only to the costs of
6 the seizure and care of the animal, or for the costs
7 incurred in the housing, care, feeding, and treatment of
8 the seized or impounded animal. Thank you.

9 CHAIRPERSON PORINI: Thank you.

10 Virginia Handley.

11 MS. HANDLEY: Hello. My name is Virginia
12 Handley, and I represent The Fund for Animals. I've
13 been active in California legislature for 30 years and
14 have been very active on all these pieces of legislation
15 that are before you and that impact this situation.

16 I did a shelter survey which I think was very
17 successful in that we did it over a period of six
18 months. It went out in writing to about 320 shelters.
19 The entire survey is in writing, responses in writing.
20 We made follow-up phone calls, sent out a second set to
21 those that didn't respond to the first. Our response,
22 we heard back from about 115 shelters, and I think
23 that's the largest direct response that you're going to
24 get on this piece of legislation.

25 The results were alarming and heartbreaking. We
26 found, in fact, that increased euthanasia has occurred,
27 not a decrease, and, in fact, in my own county of Contra
28 Costa County we recently killed over 900 additional

1 adoptable animals, not just more animals, adoptable
2 animals. The increase in adoptable animals being
3 killed, this is going on throughout the state, lower
4 adoption rates.

5 Why is this? Because you simply run out of
6 space. This is like playing musical chairs. You just
7 can't double and triple the players and not add the
8 chairs. And that is what's happened in so many
9 shelters. A lot of them they just didn't even get the
10 budgeting to increase any space. A lot of them don't
11 even have any space to make any increases. A lot of
12 them have given up their get-acquainted room, their new
13 rooms now are turned into cat cage rooms.

14 The adoptions have actually decreased
15 unanimously. The budgets have increased across the
16 board. There is no -- no exception. For those who
17 could get it. They all asked for it. Just in San
18 Francisco, where my office is, there was over \$204,000
19 increase. That was just to get some more veterinary
20 care.

21 Along with the -- the increased overcrowding,
22 100 percent, no exception, everybody having to deal with
23 increased overcrowding. They were already crowded. It
24 is now over the top. This is why when the time is up
25 for an animal, he can be an adoptable animal, if that
26 space is needed for that unsocialized pit bull who's
27 going to have to sit there for several days, of course,
28 will be killed at the end of it because he's probably

1 not going up for adoption and no one's coming in to get
2 him, the adoptable animal is the one who has to pay for
3 that lack of space.

4 Coming in right on the heels, hand-in-hand,
5 paw-in-paw, is the increase in disease, overwhelming
6 increase in disease. We used to be able to see shelters
7 that could maybe have some control of kennel cough, of
8 distemper, of Parvo, of upper respiratory diseases in
9 the cats. They're now out of control. For many places,
10 they have no places to put them. They have to have
11 isolation space. If they don't have that isolation
12 space, these animals are -- just continually expose each
13 other to these contagious diseases.

14 There's been no increase in redemptions. It's
15 been said here if a person is looking for their animal,
16 they're not waiting ten days before they come down to
17 the shelter. When they're looking for them, they're
18 there within the first couple of days, three days,
19 unless it's of some special circumstance. There has
20 been no increase in redemptions.

21 Has there been an increase in the participation
22 of rescue groups? Not really, because they were full
23 before we started. This didn't give them any more
24 space. It didn't give them any more money. And, in
25 fact, we now have the problem of rescue groups not
26 wanting to go into the shelters to get animals out
27 because they're sick. We now also have veterinarians
28 who don't want to cooperate with the shelters anymore

1 because they're sick. They don't want to take the
2 spay -- the spay and neuter jobs.

3 Assemblyman Vincent passed 1856, which mandates
4 spaying and neutering before release. That has added on
5 to the overcrowding because now animals are sitting in
6 shelters for days waiting for an appointment at the
7 veterinarian. In the meantime they're sitting there
8 exposed to disease, contributing to the overcrowding,
9 and then they go home and two weeks later they're down.
10 They've got the distemper, they've got the kennel cough,
11 and the veterinarians are not anxious to see all these
12 animals into -- into their clinics.

13 When -- a lot of talk is about, oh, you're
14 increasing from three days to four days. That is really
15 a misnomer. The existing law, which I was very much a
16 part of. Senator Robbins had the ERC, the equal rights
17 for cats bill, which flew through the legislature,
18 that -- pardon me, I'm losing my train of thought. Oh,
19 yes, it was for 72 hours. The mandate is 72 hours for
20 strays. Then we added on the cats on to that.

21 72 hours is a big difference to four or six
22 business days, not counting the day they come in. So
23 whether it's four business days, not counting the day
24 they come in, you're not talking just three to four
25 days. You're talking four, five, six, seven days,
26 depending on the days that the shelter is open,
27 depending on what day the animal comes in. This
28 absolutely multiplied the holding requirements.

1 I was in and one of the sponsors of the second
2 bill I ever worked on in the early 70s along with Gladys
3 Sargent (phonetic), who many of you may remember, and it
4 was the problem of unowned strays, injured strays,
5 animals that were very common, hit on the street, that
6 animal control would pick up and maybe they'd take them
7 back to the shelter, you know, put them in the -- put
8 them in the bin there and not give them any care, maybe
9 even kill them out in the field if -- depending on how
10 bad the situation was.

11 Well, we were very upset about that, and so we
12 put in the bill, which turned into 597(f), you must take
13 injured stray animals to a veterinarian. That was it.
14 Injured strays. That was the most egregious injustice
15 that we felt was going on. We did not address the
16 animals in the shelter. We did not address sick
17 animals. Maybe we should have. I wish that we could
18 have. At the time, though, that was as much as we could
19 deal with, and that was the most egregious animal
20 suffering, of those with broken legs who needed pain
21 relief. So those animals then were taken to
22 veterinarians.

23 Well, the next year along came another bill that
24 the shelters put in that said we can't afford this
25 basically at the expense of salaries and administration
26 and our animal control duties. So they put a layer of
27 here's the order in which you could spend this money on
28 the injured strays.

1 Then there came an additional problem of
2 veterinarians who were not just giving pain relief, but
3 they were doing surgeries, major surgeries, charging the
4 shelters hundreds of dollars for animals that most
5 likely were going to be euthanized by the end of the
6 holding period.

7 CHAIRPERSON PORINI: Ms. Handley, could you
8 conclude --

9 MS. HANDLEY: Oh, okay.

10 CHAIRPERSON PORINI: -- in five minutes?

11 MS. HANDLEY: So even a -- a notation went out
12 to the veterinarians, please, all we want is pain
13 relief, put on an emergency temporary splint, and then
14 they go back to the shelter. So definitely, this is a
15 new mandate on the shelters for the veterinary care.
16 But also because of the terrible increase in disease,
17 that -- that mandate is just out of the roof.

18 I wanted to say, the other thing, on the
19 owner-surrendered animals, it is so counterproductive
20 and to suggest that these animals should be turned away
21 who have nowhere to go, well, where do they go? In the
22 case recently of a humane society, a man came in with a
23 mother and puppies and they said please bring her back
24 tomorrow or the next day. We're going to have to kill
25 an adoptable animal in order to take this animal in.
26 We -- please come back.

27 The man went outside, dumped the animal on the
28 highway, caused a traffic accident. The mother of the

1 puppy was killed. The puppies are back in the shelter.
2 Now they're strays. Now he's got to take them.
3 Animals are then dumped into the night boxes
4 anonymously. They're put back in as strays. They are
5 dumped in the parks and whatever. Then they come in as
6 strays. Then that means they have to be held. They
7 have to be accepted. And they have to be held for days
8 with any out -- without any opportunity for adoption.
9 No information about the animal. Their adoption
10 prospects plummet. Then by the time their time is up,
11 they're killed because they've got the next batch coming
12 in. It is very counterproductive to turn away
13 owner-surrendered animals.
14 The final point I want to make, you will not
15 find any animal rescue group or humane society in this
16 state that is taking in stray animals without a
17 contract. They would be in serious trouble. They are
18 not authorized to take in stray animals. Stray animals
19 are private property. And it has been acknowledged on
20 all of these papers published by the proponent it is
21 preferable that all lost animals go to one spot. You
22 don't spread them out all over town over any various
23 animal rescue group or any other shelter.
24 So the many -- and to follow up on it has been
25 absolutely tragic of the number of humane societies that
26 have dumped animal control, and they dump it right back
27 onto the county. They then have to build new shelters
28 or they have to -- it's put over by the sheriff. It has

1 to be the sheriff department --

2 CHAIRPERSON PORINI: Thank you.

3 MS. HANDLEY: -- the police department, the very

4 people who don't want it, low priority, and it all comes

5 down to the public expense.

6 CHAIRPERSON PORINI: All right. If these

7 witnesses could leave the table, and we have just three

8 more persons who wish to testify briefly, Mike Ross,

9 Teri Barnato, and Howard Davies.

10 THE REPORTER: I need a break.

11 (Interruption in proceedings.)

12 CHAIRPERSON PORINI: All right. Mike Ross.

13 MR. ROSS: Thank you, Madame Chair. I

14 appreciate the opportunity to address the Commission.

15 I'm Mike Ross. I'm the animal services director for

16 Contra Costa County. We impound approximately 20,000

17 animals a year and provide service for approximately

18 900,000 city -- citizens in 18 cities.

19 I'm here to echo the comments of the City of Los

20 Angeles and the County of Los Angeles and San Diego

21 County in support of staff's recommendations in general,

22 but to take issue with the item having to do with

23 nonreimbursability of veterinary expense.

24 It's pretty simple from where I stand. I'm

25 spending approximately \$200,000 more than I was before

26 to take care of sick and injured animals. I had to hire

27 a contract veterinarian, registered veterinary techs,

28 and additional kennel staff. It's inescapable that

1 those activities cost money and they cost the taxpayers
2 of Contra Costa money.

3 It's been said that we can seek reimbursement
4 through fees. That is just simply not realistic. If
5 you increase licensing fees and redemption fees to the
6 level that it would take to equal out the cost increases
7 of SB 1785, people will simply not redeem their animals
8 and people will not license their animals.

9 It was said by a previous witness that we just
10 aren't doing enough to raise fees and to collect those
11 fees. We are aggressive in trying to raise revenue at
12 the county level to support our programs. We support
13 our programs to the tune of approximately 40 to 50
14 percent by revenue raised exclusive of our city
15 contracts. And to suggest that you can just keep piling
16 on additional burdens to the animal owner and expect
17 that those will not have an impact is simply
18 unrealistic.

19 The other issue that was addressed by San Diego
20 County had to do with Ms. Bryant's suggestion that those
21 of us in the public animal care profession are uncaring
22 and we are not doing enough, and I find that quite
23 unreasonable.

24 Thank you very much for your time.

25 CHAIRPERSON PORINI: Thank you.

26 Teri Barnato.

27 MS. BARNATO: I'm Teri Barnato. I'm with the
28 Association of Veterinarians for Animal Rights. We're a

1 national organization. Many of our members are
2 veterinarians who work in shelters or have experience
3 with shelter operations, and I'm basing my comments on
4 their experience and mine as well.

5 Many of the shelters today are expressing
6 concern over extended veterinary care and the
7 requirements under the law. However, the law required
8 care and treatment prior to the Hayden animal bill. And
9 the -- the wording of the law now, necessary and prompt,
10 does not mean that they have to have increased medical
11 care. That is a minimal standard. Many of the shelters
12 throughout the state have increased their veterinary
13 care, however, prior to the Hayden animal bill because
14 of public pressure. They understand that the public
15 wants better care and treatment of animals that come
16 into shelters.

17 The veterinary care that varies within the state
18 has to do with both private and public shelters and the
19 attitude of those shelters. We have found that many of
20 the shelters throughout the state have had no intuition
21 or desire to look at how they could save money in
22 veterinary care for the animals in their shelters.

23 For example, we're putting together some
24 statistics right now from one large animal shelter that
25 takes in 25,000 animals, a smaller animal shelter that
26 takes in 8,000, that shows that if shelters would
27 actually hire a veterinarian on their staff inhouse one
28 or two hours a day and use RDVs instead of sending

1 animals out to veterinarians who charge top dollar
2 throughout the locality, they would save a tremendous
3 amount of money.

4 Additionally, the animals would receive
5 immediate attention, that the suffering would be
6 eliminated a lot quicker, the disease prevention
7 programs could be in place, the disease prevention could
8 be maintained at a much better level than it is now.
9 Animals would become more adoptable because a
10 veterinarian would have evaluated them when they come
11 into the shelter, and they won't be returned as
12 frequently to the shelter by people who were not aware
13 of a problem that the animal had when they went -- when
14 they were adopted.

15 Additionally, I think that the public expected
16 that the shelters to do more. My suggestion is that if
17 they're going to continue to complain about the
18 veterinary care that they have to provide, that they
19 look at more better ways to reduce the amount of money
20 they're sending out to veterinarians outside of their
21 own shelter, and bring the care inside and do better for
22 the animals that are under their care.

23 Thank you.

24 CHAIRPERSON PORINI: Thank you.

25 Howard Davies.

26 MR. DAVIES: Thank you, Madame Chair. I'm
27 Howard Davies, assistant sheriff from Mariposa County
28 Sheriff's Department. We operate the animal control

1 division in the county of Mariposa.

2 When 1785 was implemented, our contract
3 veterinarian that did our housing for us advised us that
4 at the end of the contract he was going to have to
5 renegotiate what his fees were going to be for the
6 housing of our animals. At that time we were paying
7 \$38,000 a year to him to house our animals. His new
8 proposal was \$190,000 to comply with 1785.

9 Needless to say, being a small county, it's
10 affected us greatly. We're in the process at this time
11 of attempting to build our own facility, and we have
12 estimated that to comply with 1785, our true costs will
13 go up from approximately \$87,000 a year, which covered
14 our impound costs under the old contract and two animal
15 control officers, to approximately \$145,000 a year. We
16 will have to increase staffing to man the new facility.

17 Earlier today I heard people talk about the
18 four-day hold and one thing I think is -- we need to
19 really look at on that, a four-day hold is in reality a
20 six-to-seven-day hold. If you impound on Monday, you do
21 not count that day. You count Tuesday, Wednesday,
22 Thursday, Friday. The animal is ready for release at
23 5:00 clock on Friday. If you are not open on Saturday
24 or Sunday, you hold him until Monday before he can be
25 released.

26 Thank you.

27 CHAIRPERSON PORINI: Thank you very much. That
28 concludes our public testimony.

1 Do we have any questions from Members of the
2 committee?

3 All right. If not, then at this point in time
4 we will close this item, and we will bring it back for
5 vote only at our next hearing. Thank you to all the
6 witnesses.

7 The Commission at this point in time is going to
8 recess our public session and adjourn into closed
9 executive session pursuant to Government Code Section
10 111126, subdivision E, to confer with and receive advice
11 from legal counsel for consideration and action as
12 necessary and appropriate upon pending litigation listed
13 on the published notice and agenda and Government Code
14 Section 11126, subdivision A, and 17527 to confer on
15 personnel matters listed on the public agenda.

16 With that we are going into closed session. We
17 will be back at 1:00 o'clock.

18 MS. STONE: At 1:00 o'clock? I was wondering
19 whether the Commission would take up the consent agenda.

20 CHAIRPERSON PORINI: We'll be back for the
21 remainder of our calendar at 1:00 o'clock.

22 MS. STONE: Thank you very much.

23 (Recess taken.)

24 CHAIRPERSON PORINI: All right. I will report
25 that the Commission met in closed executive session
26 pursuant to Government Code Section 11126,
27 subdivision E, to meet and confer with and receive
28 advice from legal counsel, for consideration and

1 discussion as necessary and appropriate upon pending
2 litigation listed on the published notice and agenda and
3 Government Code Section 11126, subdivision A, and 17527
4 to confer on personnel matters listed on the published
5 notice and agenda.

6 We will go back to our regular calendar now.
7 Paula.

8 MS. HIGASHI: We'd like to start with the
9 proposed consent calendar, and that consists of items 3,
10 6, 7, 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19.

11 CHAIRPERSON PORINI: All right. Any questions
12 or comments on any of the items on the consent calendar?

13 MR. BELTRAMI: Move adoption, Madame Chair.

14 CHAIRPERSON PORINI: I have a motion.

15 MS. HALSEY: Second.

16 CHAIRPERSON PORINI: And a second. All those in
17 favor indicate with aye.

18 MULTIPLE SPEAKERS: Aye.

19 CHAIRPERSON PORINI: Opposed? Abstain?

20 Motion carries.

21 That takes us to our next item, one of the
22 nonconsent calendar items.

23 MS. HIGASHI: Yes. And let me just explain that
24 Items 4, 5, and 10 are postponed.

25 CHAIRPERSON PORINI: All right. Before we get
26 going, I need to leave the room for a few minutes, so I
27 am going to turn the gavel over to our vice-chair,
28 Mr. Sherwood.

1 MR. SHERWOOD: Thank you.

2 Paula, No. 9.

3 CHAIRPERSON PORINI: Okay. Item 9, Mr. Sean
4 Avalos will present this item.

5 MR. AVALOS: Good afternoon. This test claim
6 relates to the restrictions and requirements placed upon
7 school districts when requesting an emergency
8 apportionment or in other words an emergency loan.

9 In 1971, the legislature enacted Education Code
10 41320 et seq. This code section enabled school
11 districts experiencing fiscal difficulties to request an
12 emergency apportionment from the State. To receive an
13 emergency apportionment, however, the requesting school
14 district had to agree to perform certain activities as
15 specified by the Education Code. It also imposed
16 oversight activities on the requesting school district's
17 county superintendent.

18 In 1981 and continuing through 1995, the
19 legislature enacted, repealed, amended, and renumbered
20 various sections of the test claim legislation. These
21 changes further increased the number of reporting and
22 oversight requirements imposed on school districts and
23 their county superintendent. In addition, the test
24 claim legislation made the county office of education
25 partially liable for the administrative costs associated
26 with emergency apportionments exceeding 200 percent of
27 the requesting school district's fiscal reserves.

28 This test claim poses three issues for the

1 Commission to decide, the first of which addresses the
2 school district's role in the emergency apportionment
3 process. Under the test claim legislation, school
4 districts are authorized but not required to request an
5 emergency apportionment when experiencing fiscal
6 difficulties.

7 The test claim legislation only sets forth
8 procedures for school districts requesting emergency
9 apportionment. Even if the requesting school district
10 successfully completes the test claim legislation
11 requirements, the legislature is not bound to
12 appropriate the requested funds. Accordingly staff
13 finds that the test claim legislation does not impose a
14 reimbursable state-mandated program on school districts.

15 The second issue that the Commission must decide
16 addresses the county superintendent's role in the
17 emergency apportionment process. When the school
18 district requests an emergency apportionment, the test
19 claim legislation imposes additional oversight
20 requirements on the county superintendent. However, the
21 test claim legislation provides that the requesting
22 school district is required to reimburse the county
23 superintendent for its incurred costs.

24 Therefore staff finds that the Commission is
25 precluded from finding costs mandated by the State since
26 the county superintendent will be reimbursed for its
27 role in the emergency apportionment process by the
28 requesting school district.

1 Finally, the third issue that the Commission
2 must decide addressed the county office of education's
3 role in the emergency apportionment process. When a
4 school district requests an emergency apportionment
5 exceeding 200 percent of its fiscal reserves, the test
6 claim legislation provides that the county office of
7 education may be responsible for 40 percent of all
8 associated administrative costs.

9 Before enactment of the test claim legislation,
10 school districts were responsible for all associated
11 administrative costs without regard to the percentage of
12 fiscal reserves. Furthermore, the test claim
13 legislation does not impose any additional activities
14 upon the county office of education. It only imposes
15 additional costs that are the result of a shift, not
16 from state to local government, but from local to local
17 government.

18 Therefore staff finds in accordance with the
19 County of Los Angeles and the City of San Jose, that the
20 test claim legislation does not impose a reimbursable
21 state-mandated program on county offices of education.
22 Accordingly staff finds that the test claim legislation
23 does not constitute a reimbursable state-mandated
24 program and recommends that the Commission deny the
25 emergency apportionment test claim.

26 Will the parties and representatives please
27 state their names for the record.

28 MR. PETERSEN: Keith Petersen, representing the

1 Alameda County office of education.

2 MR. STONE: Dan Stone, representing the
3 Department of Finance.

4 MR. PODESTO: Lynn Podesto, Department of
5 Finance.

6 MR. SHERWOOD: Have all these witnesses been
7 sworn in?

8 MR. PODESTO: I haven't.

9 CHAIRPERSON PORINI: I don't think any of them
10 have been. They weren't here for the animals test
11 claim.

12 Will all of you please raise your right hand.
13 Do you solemnly swear or affirm that the
14 testimony which you're about to give is true and correct
15 based upon your personal knowledge, information, or
16 belief?

17 (Responses by multiple speakers.)

18 MR. SHERWOOD: Mr. Petersen, could we begin with
19 you.

20 MR. PETERSEN: This legislation resulting in a
21 test claim was a result of principally the Richmond
22 school case. About 11 or 12 years ago, Richmond Unified
23 School District entered into several contractual
24 arrangements which caused them significant financial
25 distress, which resulted in a need for some emergency
26 funding as part of the legislation properly known as
27 AB 1200 of 1991.

28 Since then the Compton Unified School District

1 has availed itself of this legislation and is currently
2 in that process. And I believe the Coachella District
3 is under state supervision. So it's not something that
4 comes in up everyday school business. It's a result of
5 severe financial distress.

6 I have three major issues with the staff
7 recommendation. The first threshold issue, of course,
8 is whether seeking the extraordinary loan is
9 discretionary or not. The legislation definitely uses
10 the word "may." A school district may seek out this
11 loan, and if they do seek out this loan, there are a lot
12 of conditions they have to comply with.

13 The word "may" is somewhat misleading here.
14 It's essentially saying to the school district, "This is
15 the only life ring available. It's the last one. And
16 you have the choice of saving yourself. Do you want to
17 take this, the last life ring available, or do you want
18 to start firing your staff and closing down schools?"
19 So as a choice, it's not discretionary. It's the only
20 funding source available to school districts who are in
21 financial distress.

22 The staff recommendation cites a court case
23 wherein the Oakland School District got a loan, I
24 believe, it was \$750,000 -- not a loan, excuse me, a
25 gift from the City of Oakland so they could finish their
26 school year. They were that short of funds. They cite
27 this case for the proposal that the language in the test
28 claim statute is permissive because the court noticed

1 that the City of Oakland had that opportunity to go for
2 the loan -- excuse me, the Oakland Unified School
3 District had the opportunity to go for a loan.

4 That's not on point because the issue in the
5 court case was not mandate reimbursement. The issue in
6 the court case was whether the City of Oakland had the
7 authority to give a gift of public funds, their own, to
8 another agency. And the court said the City of Oakland
9 has sufficient interest in education that they could
10 bail out Oakland Unified School District. It has
11 nothing to do with the issue of whether the school
12 district, any school district, is compelled to seek the
13 school loan.

14 I'm informed and believe that the Gann
15 initiative, section XIII B of the Constitution, and the
16 legislation arising from Prop 13, section XIII of the
17 Constitution, prohibits school districts from borrowing
18 money in excess of their revenue limit. The only
19 exception to that, of course, is the legislation in this
20 test claim, the bail-out provisions. So as a
21 discretionary act, this is the only place they can go to
22 obtain these funds and stay in business.

23 Before this legislation was a law, San Jose
24 Unified School District sometime in the early 80s was in
25 severe economic distress, and they actually filed
26 bankruptcy. It wasn't complete. But that was the
27 opportunity they had, because they could not obtain
28 funds from anywhere else.

1 So an actual choice, there is no choice. You
2 have this program with the state, and that's only choice
3 you have. I guess the other choice, actual choice, is
4 to start laying off staff, but you're not allowed to
5 close your schools. It's against the Constitution.
6 You've got to provide education. The State won't let
7 you shut down your school district. So the choice,
8 again, is you go back to this loan, so that's why it's
9 not discretionary.

10 The second threshold issue is even if it is
11 discretionary, the school district, the duties compelled
12 upon the county office, the fiscal advisory and
13 oversight duties compelled by the legislation are not
14 discretionary for the county office. The county office
15 didn't ask for the loan, the school district did.

16 Once the school district asked for the loan, it
17 sets in motion several things the county office has to
18 do, not because they want to, it's because they can't
19 avoid it. They have certain tasks they have to perform
20 as a result of a school district in their county asking
21 for that loan.

22 The third threshold issue is the staff
23 recommendation citing the City of San Jose case to
24 excuse reimbursement of the county office for these
25 tasks. The City of San Jose dealt with state
26 legislation permitting cities to charge -- excuse me,
27 counties to charge cities and other local agencies
28 booking fees. They gave the power to the county to say

1 if you want to use our jails, we can charge you for
2 booking expense.

3 That was a result of the City of San Jose case.
4 The state said you had to charge -- you had the power,
5 county, to charge fees to local agencies. In this case
6 it doesn't say that. The county office is not charging
7 fees to the school district. The legislation quite
8 clearly requires the county office to perform these
9 tasks and for the school district to reimburse a portion
10 of that amount to the county office, 40 percent.

11 The balance has to be eaten by the county
12 office. They have the ability to apply for waiver of
13 that expense, but they're by statute required to eat
14 that expense. It's not a case where they can charge a
15 fee to the school district. There is no service
16 arrangement ahead of time. There's no ongoing
17 relationship. This is a one-time statutory compulsion
18 to provide services to the school district.

19 That's it.

20 MR. SHERWOOD: Thank you, Mr. Petersen.

21 Department of Finance.

22 MR. STONE: We'll be very brief unless the
23 Commission members have questions, but we're in --

24 MR. SHERWOOD: When we're through with both
25 sides, we'll open that to Commission members, and I'm
26 sure somebody will have some questions.

27 MR. STONE: All right. But we're in agreement
28 with the staff recommendation and analysis. I would

1 just make one point above and beyond that, which is it
2 goes to Mr. Petersen's last point regarding the City of
3 San Jose case. There is a very recent Court of Appeal
4 decision from the third appellate district here in
5 Sacramento. The case is City of El Monte. It's decided
6 in the year 2000. It's 83 Cal App 4th 266, and I would
7 direct your attention to pages 279 to 280.

8 In that case the Court of Appeals said that it
9 repeated and adopted the City of San Jose theory as to
10 the shifting of costs between local agencies not being a
11 reimbursable state mandate, and it did it in the context
12 in which the state had dictated the shift, so it's
13 precisely the kind of circumstances here. And the City
14 of San Jose, according to this appellate district,
15 nevertheless applies.

16 MR. PETERSEN: Is that in the record?

17 MR. STONE: Is what in the record?

18 MR. PETERSEN: The case you just cited.

19 MR. SHERWOOD: He's referring to page 279 to
20 280, weren't you?

21 MR. STONE: Yeah, 279 to 280. You want me to
22 repeat the cite?

23 MR. PETERSEN: No. It's in the record?

24 MS. STEINMEIER: Which exhibit?

25 MR. ROBECK: Is it in the record --

26 MR. STONE: Oh, no. No. It's a very recent
27 decision. It just came out within the last month or
28 two.

1 MR. PETERSEN: Jeez, I'd like to see it.

2 MR. STONE: Okay. What's the procedure? I'd be
3 happy to provide the Commission and the parties with
4 copies of --

5 MR. SHERWOOD: Well --

6 MR. STONE: I believe the Commission was a party
7 to that decision so.

8 MR. SHERWOOD: Paula.

9 MS. HIGASHI: We can certainly get a copy of the
10 case out. This is a case that petitioned for review.
11 It's been filed and is currently pending with the
12 Supreme Court.

13 MR. PETERSEN: And the Commission staff didn't
14 cite it?

15 MR. SHERWOOD: Correct. We'll move on from
16 there, but it is a piece of information, obviously, we
17 don't have before us. If it has a significant impact,
18 then I imagine what we have to do is come back again and
19 rehear this information.

20 MR. PETERSEN: Well, actually it has an impact
21 on the third issue. The first two could kill the test
22 claim before you get to the third actually, depending on
23 how you rule.

24 MR. SHERWOOD: You noticed that correlation.

25 MR. PETERSEN: You might never get to the issue.

26 MR. STONE: But the case is -- it was an appeal
27 from -- it was someone's attempt to review and reverse a
28 finding of this Commission. So, as I say, the

1 Commission is a central party in the litigation. But
2 I'd be happy to provide copies of the decision.

3 MR. SHERWOOD: And obviously you don't have it
4 here at moment.

5 MS. HIGASHI: Not with us.

6 MS. HART JORGENSEN: And in fact, it's my sort
7 of understanding there's an issue as to whether or not
8 it's to be published.

9 MR. STONE: Oh, no, it's published and citable
10 at this point. But as Paula pointed out, there is a
11 petition for review --

12 MS. HART JORGENSEN: Right.

13 MR. STONE: -- in the Supreme Court pending --

14 MS. HART JORGENSEN: Right. Right.

15 MR. STONE: -- and it's --

16 MS. HIGASHI: It's already has been requested
17 for --

18 MS. HART JORGENSEN: I'm sorry, yeah.

19 MR. STONE: Right.

20 MS. HART JORGENSEN: Requested depublication so
21 I don't -- it's an issue right now whether it's citable.

22 MR. STONE: Well, it is citable unless and until
23 the --

24 MS. HART JORGENSEN: Well, right.

25 MR. STONE: -- court acts in favor of those
26 requests, but the requests are pending.

27 MR. SHERWOOD: Thank you, Mr. Stone.

28 Mr. Podesto, do you have any comments to add?

1 MR. PODESTO: No.

2 MR. SHERWOOD: No?

3 MR. ROBECK: Are we going to then put this off
4 pending the receipt of that?

5 MR. SHERWOOD: I think it would depend on what
6 the Board members felt at this point. I mean, if the
7 Board members feel that, then that's what we'll do.

8 MR. ROBECK: Because I don't want to ask
9 questions if we're just going to put it over.

10 MR. SHERWOOD: Members?

11 MS. HALSEY: Oh, I was just saying we may
12 resolve the case now depending on the questions asked
13 and answered, I think.

14 MR. ROBECK: Okay.

15 MR. SHERWOOD: I would -- based on what I've
16 heard here, my tendency would be to put it over and get
17 the information to determine whether it has an impact,
18 if we can get the information. But I would like to hear
19 what everyone else thinks.

20 MR. BELTRAMI: Mr. Chairman?

21 MR. SHERWOOD: Yes.

22 MR. BELTRAMI: Am I correct that this recent
23 case basically reaffirms the San Jose case?

24 MS. HIGASHI: Potentially, yes.

25 MR. BELTRAMI: So what's --

26 MS. HART JORGENSEN: It reaffirms the staff
27 analysis, right?

28 MR. STONE: Yes.

1 MR. PETERSEN: No.

2 MR. SHERWOOD: Yes. Well, that's the argument.

3 There would be another argument that it may not, so I

4 think that's the problem.

5 MS. STEINMEIER: Well, for me it's a problem

6 because it's still alive until I get to that point. I

7 mean, I -- I agree with Mr. Peterson on the fact that

8 the school districts don't have a true choice, so I'm

9 already there on the threshold issue. So to me it comes

10 down to that last thing, can the -- do counties have the

11 ability to charge, and that to me is the key issue. And

12 it might be helpful to see --

13 MR. SHERWOOD: I'm afraid it might be for me

14 also.

15 MR. LAZAR: I'll move that we put it over.

16 CHAIRPERSON PORINI: Do we have a motion to put

17 this over?

18 MR. LAZAR: I'll make the motion.

19 CHAIRPERSON PORINI: We have a motion from

20 Mr. Lazar.

21 MS. STEINMEIER: Second.

22 MR. SHERWOOD: Second. Roll call.

23 MS. HIGASHI: Ms. Halsey.

24 MS. HALSEY: No.

25 MS. HIGASHI: Mr. Lazar.

26 MR. LAZAR: Aye.

27 MS. HIGASHI: Mr. Robeck.

28 MR. ROBECK: Aye.

1 MS. HIGASHI: Mr. Sherwood.

2 MR. SHERWOOD: Aye.

3 MS. HIGASHI: Ms. Steinmeier.

4 MS. STEINMEIER: Aye.

5 MS. HIGASHI: Mr. Beltrami.

6 MR. BELTRAMI: No.

7 MS. HIGASHI: Okay. We'll get a copy of case
8 out. You can pick it up at the office after the hearing
9 if you want.

10 MR. SHERWOOD: And, Paula, you feel we will have
11 access to it then?

12 MS. HIGASHI: Oh, we have at the office.

13 MR. SHERWOOD: All right. Thank you. Thank you
14 for coming.

15 MR. PETERSEN: Thanks a lot.

16 MR. ROBECK: I'd like staff to also take into
17 account the funds that are provided through FIGMAT
18 (phonetic) that county offices can claim for
19 extraordinary services to school districts. Those are
20 budgeted points in the revolving fund.

21 MR. SHERWOOD: Staff have any requests? Fine.
22 Thank you.

23 MS. HIGASHI: This brings us to Item 20.
24 Item 20 is on the agenda. It's placement on agenda was
25 prompted by a statement that Mr. Burdick made in the
26 public comment portion, and it was regarding how the
27 Commission staff proposed -- how the Commission and its
28 staff proposed to participate in the legislative process

1 and legislation which they might develop and sponsor.

2 MR. SHERWOOD: This was a general discussion
3 item?

4 MS. HIGASHI: So it's a general discussion item.

5 MR. SHERWOOD: Does anyone wish to come forward
6 to address this issue?

7 MR. ROBECK: Apparently not.

8 MR. SHERWOOD: Do the Members wish to make a
9 comment on this? This was brought up at our last
10 meeting, I think. Mr. Robeck actually --

11 MR. BELTRAMI: I wasn't here for that.

12 MR. SHERWOOD: Thank you, Mr. Beltrami.

13 Mr. Robeck.

14 MR. ROBECK: Well, the item was suggested by
15 Mr. Burdick, and I thought it was appropriate to
16 agendize it since it was not part of the agenda before,
17 and if we want to address that issue put it as an agenda
18 item. That was, in my view, without prejudice as to how
19 the Commission might react to that -- to that item.

20 As I understand it from the executive director,
21 the Commission in the past has cooperated with and
22 provided information on a variety of proposals that
23 affect the Commission on State Mandates and have
24 certainly provided important information inputs on cost
25 legislation but that in the past the Commission staff
26 has not provided a proactive position on legislation
27 that might affect the duties and responsibilities of the
28 Commission, the membership of the Commission, whatever

1 might -- might be the legislation that's out there, nor
2 has the Commission taken -- taken positions.

3 It's my understanding that to the extent that
4 there's been lobbying involved, it's been on an
5 individual Commission member basis and not on a
6 collective basis. My feeling is that it would be very
7 difficult, given the composition of the Commission, to
8 engage in any kind of significant lobbying without
9 running the severe risk of having individual members of
10 the Commission possibly having to take contrary
11 positions to whatever position the Commission had and
12 could we as a unit come with a unanimous position and
13 then how much weight would that carry. I find it rather
14 doubtful.

15 Plus, the Commission staff, as you can see from
16 the organization chart is -- is small. They have a
17 substantial workload to do to fulfill the mandates that
18 they currently have for duties and responsibilities.
19 And if there's any additional time, there's clearly
20 issues of law that can withstand more work and research
21 that's done on mandated proposals.

22 So having said all that, it's my belief that the
23 Commission should not attempt to engage in any kind of
24 issue position taking or legislation or engage in any
25 active lobbying as a group.

26 MR. SHERWOOD: Thank you, Mr. Robeck. Just from
27 my standpoint, I think you've summarized it very well,
28 and I would very much be in agreement with your

1 statement.

2 And any comments from any other Members?

3 MS. STEINMEIER: Yeah, I would concur, I mean,
4 for two reasons. First of all, we want the staff to be
5 working on our main goals and this would take away from
6 that. No. 2, if you didn't have a unanimous position,
7 and I think that it would be hard to come by, it's not
8 very effective to take something and say we believe in
9 this four to five or three to two. It just doesn't --
10 it doesn't have any impact on the legislation, and I
11 think it would have a negative impact on the operations
12 of the Commission itself.

13 So I agree with you. I think it's an individual
14 call. Some of us don't, you know, work for state
15 agencies. It's easier for us to have positions. And I
16 have not really spent much time doing that, but I could
17 if I felt strongly enough about it. And anybody as an
18 individual could do that. So I just don't think it
19 would be very effective and would be counterproductive
20 to the operation of the Commission.

21 MR. SHERWOOD: Thank you, Ms. Steinmeier.

22 Mr. Beltrami.

23 MR. BELTRAMI: I agree with the comments made
24 and I think we should do whatever we do individually,
25 but I don't know that we should particularly tie our
26 hands if some issue were to come up next year.

27 MS. STEINMEIER: I agree.

28 MR. BELTRAMI: If it was something that we all

1 had a particular concern about as far as the ability of
2 this Commission to function.

3 MR. SHERWOOD: And I --

4 MR. BELTRAMI: So I think you almost have to
5 just call it on its merits, and we really haven't gotten
6 involved up to now almost on anything, have we, that I
7 remember.

8 MS. HIGASHI: Only to local claims bill.

9 MR. BELTRAMI: Well, yeah. But that's an
10 information kind of item which you're providing.

11 MS. HIGASHI: Yes. We are required to respond
12 to questions, and I have made appearances in committees.

13 MR. SHERWOOD: But I think you're right,
14 Mr. Beltrami, but what we're doing today is not taking a
15 direct action to get involved. It does not preclude us
16 from, in the future, doing so.

17 MR. ROBECK: No action, then.

18 MR. SHERWOOD: No action.

19 MR. ROBECK: It does not preclude future action.

20 MS. HALSEY: Do we need to make a motion?

21 MR. SHERWOOD: No, on this, no action.
22 Information only. If everyone's has spoken, we will
23 just move on to the executive director's report.

24 MS. HIGASHI: Executive director's report is
25 very brief here. There is an itemization of the
26 workload data. And as you can see, as Mr. Robeck
27 pointed out, we do still have a substantial workload to
28 address without any additional assignments.

1 We have also given you copies of the chapter
2 legislation and copies of veto messages on other bills
3 that we thought you might find of interest.

4 We have an issue concerning our next hearing.
5 We have now added a couple of agenda items to it.
6 Originally it had been scheduled to be a two-day hearing
7 and then --

8 MR. SHERWOOD: You want to make it a three-day
9 now, is that what you --

10 MS. STEINMEIER: No, thank you.

11 MS. HIGASHI: We have a number of issues to
12 address. First, it started out as a two-day hearing.
13 Then we had two administrative -- we had three
14 administrative law judge decisions which we thought
15 would be forwarded. Two of those proposed statements of
16 decision are special ed cases. The claimants in those
17 two cases have requested postponement of those hearings
18 pending action in terms of a potential settlement.

19 MR. SHERWOOD: Future action?

20 MS. HIGASHI: Right. So those two items have
21 been taken off of calendar.

22 We have now picked up two additional items today
23 for the continued items, and then we've also picked up
24 the items. So we're at the point where we might have a
25 long hearing on one day or we have two short days, two
26 short hearings back to back.

27 MR. BELTRAMI: Well, one of the items should
28 not -- I thought we were just going to take a vote

1 basically.

2 MS. HIGASHI: Right, but there's still
3 additional items we're putting on the agenda. In
4 emergency apportionments you will be having a hearing on
5 it.

6 MR. SHERWOOD: I would think the two items we
7 move forward would take less time, possibly, than the
8 two items that we've postponed. I think you're right
9 about that, Al, but there will still be some discussion
10 I'm sure.

11 MS. HIGASHI: Right.

12 MR. SHERWOOD: I've never seen anything go here
13 that didn't have discussion.

14 MS. HIGASHI: And the items that have been taken
15 off the consent calendar, that's with the purpose of
16 attempting to reach resolution so that they could once
17 again be moved to consent. So --

18 MS. STEINMEIER: Can I make a comment for me
19 personally? For me personally, having a two-day hearing
20 would be a lot harder. I have another commitment down
21 in Southern California for the 1st. So I would prefer
22 to have one longer day hearing than to have two. It's
23 just more efficient for me because I have to come back
24 and forth. That's my two cents.

25 MR. SHERWOOD: When we talk about a longer day,
26 are we talking eight hours?

27 MS. HIGASHI: Oh, I don't think you've ever gone
28 that long.

1 MR. SHERWOOD: Oh, yes, we have.

2 MS. HIGASHI: Maybe on special ed days. I

3 remember the day. I was there.

4 MR. SHERWOOD: I think on this I'd like to hear

5 from the other Board members.

6 MR. LAZAR: I can go either way. I don't mind

7 being here an entire day as long as we break for lunch.

8 MS. STEINMEIER: No working through lunch.

9 MR. ROBECK: I think the burden is really on the

10 out-of-town people. I mean, we can come two part days

11 without a lot of pain. We can get to our office and get

12 lots of work done in between, but for the out-of-town

13 folks, two shorts days, if it was me coming from out of

14 town, I'd prefer one long day to two short days.

15 MR. SHERWOOD: It sounds like we have some

16 agreement here that we would like to go towards one day.

17 MS. HIGASHI: Okay.

18 MR. BELTRAMI: And we could start at 9:00,

19 maybe, instead of 9:30.

20 MR. SHERWOOD: Possibly.

21 MS. HIGASHI: Depending on travel arrangements,

22 we'll work through that.

23 MR. SHERWOOD: Okay.

24 MS. STEINMEIER: I guess in the unlikely event

25 that the numbers multiple again, we may have to revisit

26 this, but I would prefer to try to stay with one day.

27 MR. SHERWOOD: Let me ask you something. Does

28 this create a problem that we only have one meeting in

1 one month?

2 MS. HIGASHI: Technically, the statute says that
3 we should meet each month. Last year we did not meet in
4 December.

5 MR. SHERWOOD: Okay. We'll probably have to
6 address that at the next meeting, the fact that we were
7 not going to have a meeting the following month for
8 whatever reason it might be.

9 MR. BELTRAMI: Are legally bound or not?

10 MS. HIGASHI: There's no penalty in the
11 provision. Interest rates don't double or anything like
12 that. Basically the statute says the Commission shall
13 meet once a month.

14 MS. HART JORGENSEN: If I could --

15 MS. HIGASHI: Is there any objection? We should
16 ask.

17 MS. HART JORGENSEN: We originally did schedule
18 for the two days. And like Paula said, it was that it
19 was at the request of claimant that these items be put
20 over. And they were scheduled for December 1st, so,
21 yes, we are supposed to meet once a month. And, again,
22 I think you asked the right question is there any
23 objection from the claimants if we miss December?
24 Again, there's no penalty.

25 MR. SHERWOOD: Obviously we wouldn't want to do
26 anything illegal here or against statute, but if the
27 claimants had any input here on this particular issue, I
28 would imagine we could also address this again between

1 now and the end of the month and also at that meeting.

2 MS. HART JORGENSEN: Correct.

3 MR. SHERWOOD: Obviously the group present

4 aren't coming forward on this issue, have no comment,

5 but that doesn't mean there aren't others out there who

6 we will hear from.

7 MR. BELTRAMI: It would be helpful for me,

8 Mr. Chairman, if we not come here November 30 and then

9 decide that day --

10 MR. SHERWOOD: I'm assuming that it would not be

11 over to the 1st, but maybe to some other date in

12 December.

13 MS. HIGASHI: Right.

14 MR. SHERWOOD: We won't necessarily make it --

15 MS. HART JORGENSEN: And, again, subject to

16 sending notice, but there still would be time. We would

17 know that November 30th. We could do something.

18 MR. SHERWOOD: Thank you. So at the current

19 time then we're planning one meeting, a longer meeting.

20 Was that on the 30th?

21 MS. HIGASHI: That's correct.

22 MR. SHERWOOD: Okay. Fine, thank you.

23 MS. HIGASHI: At this time we've reached the

24 public comment portion of the meeting, unless there are

25 any questions you wish to ask me about the executive

26 director's report.

27 MR. SHERWOOD: I have no further questions.

28 Other Board Members? Public comment?

1 MS. HIGASHI: What I'd like to do is introduce
2 one of our new staff members, Ellen Fishman, would you
3 please stand up. Ellen has recently joined our staff as
4 a half-time staff counsel, and she'll be working on
5 incorrect reduction claims as well as some mandated
6 claims issues if she ever finishes all the others.

7 And I think all of our -- we had a couple other
8 members of our staff who were here this morning that you
9 haven't met. We'll be sure to introduce them at the
10 next hearing.

11 And I had one announcement I wanted to make and
12 that is that this is the last hearing for Jeff Yee from
13 the State Controller's Office. He is retiring from
14 state service, and I'd like to invite Jeff to come up to
15 the table, and any other parties who wish to place
16 comments in the record.

17 MR. SHERWOOD: I have had the opportunity to
18 work for Jeff many years myself and know Jeff's work,
19 and it's really been an honor to work with him and his
20 agency, and he has done a wonderful job with the
21 Commission.

22 Jeff, this is in honor of Jeffrey O. Yee, Office
23 of the State Controller, 1973 to year 2000. This comes
24 from the Members of Commission. And whereas Jeffrey O.
25 Yee has distinguished himself as an employee of the
26 State Controller's Office from 1973 until 2000 and
27 whereas he is recognized throughout state and local
28 government as an expert in the area of state-mandated

1 costs because his supervisory reimbursement of over 180
2 separate mandated programs -- pretty amazing -- whereas
3 he has advised and influenced the Commission on State
4 Mandates in determining counties, cities, and other
5 local agencies, including school districts, should be
6 reimbursed pursuant to Section 6, article XIII B of the
7 California Constitution and 174514 of the Government
8 Code, and whereas Jeffrey O. Yee is being honored by the
9 Members and the staff of the Commission on State
10 Mandates in appreciation of his outstanding dedication
11 and leadership and service to the State of California;
12 therefore be it resolved the Commission on State
13 Mandates formally congratulates Jeffrey O. Yee upon his
14 retirement from state service. Done this 26th day of
15 October, 2000, County of Sacramento, State of
16 California, in witness thereof, the Commission on State
17 Mandates.

18 Congratulations.

19 MR. YEE: I'd like to thank everybody for the
20 good thoughts in giving me this. I'll find a place on
21 the wall for it.

22 I'd just like to say that it's been my privilege
23 to have interacted in this forum since 1975 when it was
24 first formed as the Board of Control and then from 1985
25 on as the Commission on State Mandates. And I've
26 enjoyed working with all the Commission staff. They
27 have always acted professionally. And throughout the
28 years there has always been free flow of information so

1 we could get the job done efficiently.

2 And my life, especially my knowledge, has been
3 enriched by the -- all the test claims that have been
4 brought forward to this forum that were adopted as
5 mandates which I had to learn so that I could get these
6 claims made.

7 And, finally, since I'm retiring, I'm retired
8 for reasons that maybe someone else can follow my
9 footsteps and enjoy the opportunities that I had.

10 Thank you.

11 CHAIRPERSON PORINI: Thank you.

12 MR. SHERWOOD: Paula, I'm turning the gravel
13 back to the chair as she's returned.

14 CHAIRPERSON PORINI: All right. Is there any
15 further business?

16 Any comments from the public?

17 Hearing none, we're adjourned.

18 (Whereupon the hearing concluded at 1:48 p.m.)

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REPORTER'S CERTIFICATE

I hereby certify the foregoing hearing was held
at the time and place therein named; that the
proceedings were reported by me, a duly certified
shorthand reporter and a disinterested person, and was
thereafter transcribed into typewriting.

In witness whereof, I have hereunto set my hand
this 30th day of October, 2000.

Yvonne K. Fenner
Certified Shorthand Reporter
License No. 10909

